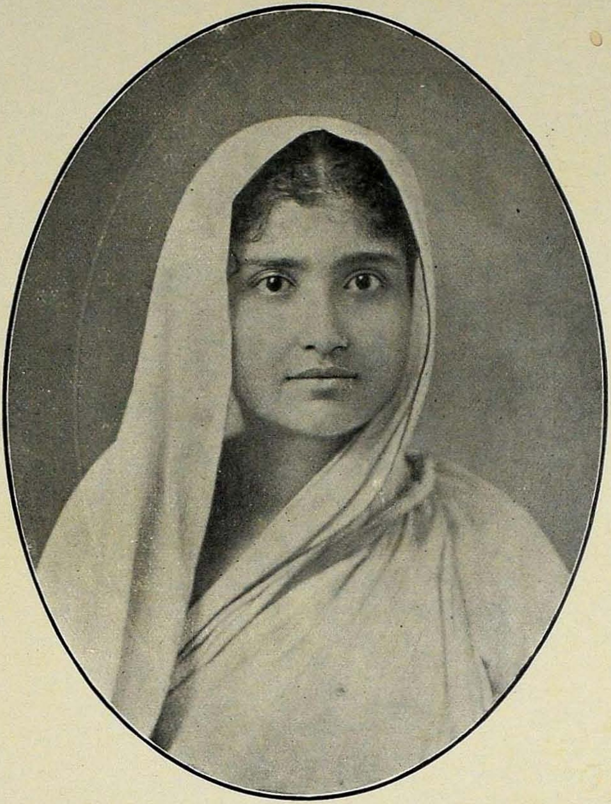
THE KAMALA LECTURES



KAMALA DEVI

THE RIGHTS AND DUTIES OF THE INDIAN CITIZEN

BY

V. S. SRINIVASA SASTRI

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FOUNDER'S LETTER

77, Russa Road North
Bhowanipore
Calcutta

9th February, 1924.

To

The Registrar,

Calcutta University.

Sir,

I desire to place at the disposal of my University Government Securities for Rupees Forty Thousand only of the 3 per cent. Loan with a view to establish a lectureship, to be called the *Kamala Lectureship*, in memory of my beloved daughter Kamala (*b*. 18th April, 1895—*d*. 4th January, 1923). The Lecturer, who will be annually appointed by the Senate, will deliver a course of not less than three lectures, either in Bengali or in English, on some aspect of Indian Life and Thought the subject to be treated from a comparative standpoint.

The following scheme shall be adopted for the lectureship :

(1) Not later than the 31st March every year, a Special Committee of five members shall be constituted as follows :

One member of the Faculty of Arts to be nominated by the Faculty.

One member of the Faculty of Science to be nominated by the Faculty.

One member to be nominated by the Council of the Asiatic Society of Bengal.

One member to be nominated by the Bangiya Sahitya Parishad.

One member to be nominated by the Founder or his representatives.

(2) The Special Committee after such enquiry as they may deem necessary, shall, not later than the 30th June, draw up a report recommending to the Senate the name of a distinguished scholar. The report shall specify the subject of the proposed lectures and shall include a brief statement of their scope.

(3) The report of the Special Committee shall be forwarded to the Syndicate in order that it may be laid before the Senate for confirmation not later than the 31st July.

(4) The Senate may for specified reasons request the Special Committee to reconsider their decision but shall not be competent to substitute another name for the one recommended by the Committee.

(5) The Lecturer appointed by the Senate shall deliver the lectures at the Senate House not later than the month of January next following.

(6) The Syndicate shall, after the lectures are delivered in Calcutta, arrange to have them delivered in the original or in a modified form in at least one place out of Calcutta, and shall for this purpose pay such travelling allowance as may be necessary.

(7) The honorarium of the Lecturer shall consist of a sum of Rupees One Thousand in cash and a Gold Medal of the value of Rupees Two Hundred only. The honorarium shall be paid only after the lectures have been delivered and the Lecturer has made over to the Registrar a complete copy of the lectures in a form ready for publication.

(8) The lectures shall be published by the University within six months of their delivery and after defraying the cost of publication the surplus sale proceeds shall be paid to the Lecturer, in whom the copyright of the lectures shall vest.

(9) No person, who has once been appointed a Lecturer shall be eligible for re-appointment before the lapse of five years.

Yours faithfully,
ASUTOSH MOOKERJEE.

THE LECTURER

THE RIGHTS AND DUTIES OF THE INDIAN CITIZEN

LECTURE I

INTRODUCTORY

WHAT IS A "CITIZEN"?

The subject of this course of lectures has been stated to be "The Rights and Duties of the Indian Citizen." At the outset therefore, it is well to understand the meanings of the important terms, "Citizen" and "Right." As in the case of several other expressions in constant popular use, logical precision and legal accuracy may not be attainable. But as we proceed we shall learn enough of their ordinary meaning to enable us to feel that we are on firm ground and may pursue the enquiry to some purpose. In common speech "Citizen" denotes a member of an organised political community, considered as possessor of certain rights, in this respect contrasting with the words "slave" and "subject." There being no more

slavery in the civilised world, except to an extent of which no notice need be taken here, we may dismiss the word "slave" with the remark that it suggests an all but complete negation of legal rights. There is no hint of degradation conveyed by the word "subject," but it regards an individual as under some obligations or duties which he may be compelled to discharge towards the community. The same person may thus be citizen or subject according as we look at his rights or his duties. In certain communities the law discriminates between classes so that some individuals enjoy more rights than others, who seem by comparison to be on a lower level of political growth. Where this discrimination is strongly marked, the words "citizen" and "subject" become words of praise and dispraise, almost like the words "rulers" and "ruled." For instance, it does seem violence to language to apply the name citizen to the dark population of South Africa or the unapproachables in our own country. Where, however, representative institutions have struck root and the dignity of human personality is recognised, though it be dimly, none are so low but they are admitted to certain rights and none are so high but they have to bear certain burdens. In States which deserve to be called constitutional, individual members may be styled citizen or subject indifferently, for however their connotations may differ, their denotations are

the same. In legal parlance even the connotations would appear to agree, comprehending both rights and duties. Broadly speaking, the word "subject" is used where the form of government is monarchical, while republicans prefer to style themselves citizens. In the British Empire we are all alike subjects of His Majesty, the word citizen not being known to English law. America, France, present-day Germany call their subjects citizens. There are, however, exceptions to these propositions, the most notable being the constitution of Ireland, which, though conforming to the British monarchical type, signifies its desire of independence in several little ways, one of them being its partiality for the term citizen. In the title of this series of lectures it is obvious that 'citizen' must be understood in its ordinary literary sense; to satisfy the lawyer's conscience, we should translate the title "The Rights and Duties of Indian Subjects of His Imperial Majesty."

Elements of Social Well-being.

But we have not still got to the heart of the meaning of the expression "citizen." To do this we shall have to consider his relation to the State. At one end a certain school of thinkers, typified by the militarists of Prussia, now happily discredited, hold that the State is everything and the individual

citizen nothing. At the other end the anarchists exalt the individual so high that they have no use for the State at all, or even if they find room for it in their theory, confine it within the narrowest possible sphere. Neither of these extremes finds much favour with political philosophers in general. These steer a middle course and regard the State and the citizen as bound each to the other by an intimate relation. The State exists to promote the highest moral welfare of the citizen. Mazzini said that the aim of the State should be the development to the highest possible pitch of all the powers and faculties of the citizen. Now this all-round development, that is to say, the growth of each citizen to the full height of his moral and intellectual stature, is possible only in a community which itself stands on a high level of culture and virtue. It follows that the welfare of the individual can be best promoted only when it is held in due subordination to that of the community, and amongst his highest attributes is a readiness to sacrifice himself for the benefit of his fellow-men. This makes it essential that every citizen, in order to realise himself fully, must have an intelligent appreciation, not only of what constitutes his highest moral welfare, but of those somewhat more remote and complex conditions which make up the highest moral welfare of the community. A careful writer has brought together under certain

heads these necessary elements of social well-being. They are:

1. Security of person, property and reputation.
2. Freedom of speech and action.
3. Sanitary conditions of life.
4. Good and cheap education.
5. Religious toleration.
6. Light and fair taxes.
7. Good times in Industry and Commerce.
8. Efficient public administration.
9. Decency of life in all ranks and classes.
10. National defence and honour.

Judgment in Public Affairs.

So stated, these elements sound more abstract and difficult of comprehension than they really are. The ordinary man may not be able to discourse clearly and learnedly about them, but he would almost certainly and as if by instinct know when he has them and when he misses them. Nevertheless, in countries which are democratic or aspire to be democratic, they become topics of everyday discussion and objects of solicitude to public organisations as well as workers of all grades. The training of a citizen cannot therefore be complete unless it includes a preparation not only to understand but to value and promote these constituents

of social welfare. As has been said already, true citizenship means on the ethical side the spirit of self-sacrifice for the benefit of the community, in other words the quality of public spirit which in small matters and in great inclines a man habitually to prefer the general good to his own whenever they conflict. But there is also an intellectual side to this preparation which is not less important—the sound practical judgment which enables one to know the true from the false and the good from the bad and, more difficult still, the true from the plausible and the good from the attractive. Public affairs are so complicated and many-sided nowadays that few educators of the public, politicians, journalists or professors, approach them without bias, whether conscious or unconscious ; and every person entrusted with a vote, that is, with a share, however small, in the government of his community, must cultivate the faculty of hearing all sides of a question and coming to decisions based on commonsense and without reference to passion or self-interest. It is commonly said that the Englishman is distinguished among the nations of the world for possession of this sound practical judgment, and that he is much less liable to be carried off his feet than other people by mere claptrap or appeal to passion. We cannot judge how far this superiority is due to natural disposition and how far to the practice of real self-government during

some centuries. Anyhow, while still we are on the threshold of democratic institutions, it is well to realise the supreme importance of cultivating this quality as a fundamental part of the citizen's equipment and the duty that rests on those who can influence the thought and action of the first generations of enfranchised Indians, of bringing them up in habits of patience, reflection and sober study.

What do we mean by "The State"?

In ordinary language no distinction is observed between the State and the community. In this branch of our subject, however, it is necessary to make a distinction. We said that the State has no right to exalt itself to the point of neglecting or suppressing the individual, but conceded such superiority to the community. The community is the whole, the State is that part of it which, with its express or implied consent, is organised for the management of public affairs. Its numbers are indeterminate; the functions of its members range from actual administrative authority to criticism or influence in certain recognised ways. These members are drawn generally from a limited section of the community and very rarely from all sections. The more democracy spreads, the larger the number of people comprised in the State. In fact, if we could

conceive democracy carried to the farthest point and a modern political community brought within manageable numerical limits, the State might be co-extensive with the community. In many situations the State acts as an intelligent and faithful agent of the community; in many it notoriously does not. When we speak of subordinating the moral welfare of the citizen, we mean subordinating it to the moral welfare of the community and not to that of the State; when we speak of the highest development of the community, we deliberatively exclude the State and its members as such from consideration.

"Rights" and "Duties."

We now come to an examination of the way in which rights and duties stand to each other. At first sight they contrast sharply, rights being your gain and other people's loss, while duties are other people's gain at your expense. Lawyers say that every right belonging to a man implies an act or forbearance which he can compel from others or the State, and every duty is an act or forbearance which others or the State can compel from him. A closer relation can be seen to exist between the two. They may in fact be the same thing looked at from different points of view. For example, the franchise or the power to vote at a parliamentary

election is a right conferred by the law on persons possessing certain qualifications. In our country a man is free to exercise this right or not as he pleases. But there are some countries in which every voter must go to the poll. Failure must be satisfactorily explained or entails a fine. In Australia, which I visited in 1922 to plead for the enfranchisement of our countrymen, the vote was extended to them recently; but it has come as a mixed blessing. Some of them are being hauled up for not exercising the vote and do not exactly thank me for my mission. Whether the law makes it a duty or not, the ideal citizen will spare no trouble in understanding the main issue at an election, coming to his own conclusion, and voting accordingly. Ordinarily the percentage of the voters that go to the polls may be regarded as a measure of the political enlightenment of the community and of its fitness for democratic institutions, for at the very root of democracy lies a faith in parliamentary discussion as a means of settling political questions and making progress in constitutional matters. We got the vote for the first time in 1920. Naturally our people had an imperfect understanding of its value, and too many were dissuaded by the agents of non-co-operation from taking part in the first election. A purely negative campaign like that will never again meet with so much success, for our voters

will learn more and more that an election is a time not only for fun and excitement but also for exercise of real political power, slight though it be and shared with a multitude of others. Education, especially elementary education, is another item which is both a right and a duty. If the State—say in England or Scotland—can punish a parent for persistently refusing to send his child to school, the parent in his turn may compel the State to provide a suitable school for his child within a certain distance. How far are we in India from such a state of things, notwithstanding all the fuss that is made about compulsory primary education in certain areas? Our next instance will sound strange in this country. It is taken from the constitution of the new German Republic. One of its basic ideas is that every citizen is bound to do work on the one hand and on the other is entitled to have work found for him or in the absence of work to be maintained at State expense. It would be too much to say that these ideals had been realised or that efficient institutions had been devised to secure them. But they have gained a definite foothold in the minds of those who regulate the activities of the State, and it is only a question of time and opportunity for them to be translated into daily practice. On the other hand, what is the state of opinion in our country? What would happen to

the legislator who proposed seriously that every man, howsoever rich, should do some work every day? It need not be manual labour, for now it is admitted everywhere that brain workers are as useful and necessary to the community as any other workers. Idleness is not censured by our public opinion as anti-social; the fact that some ancestor worked hard in his time is held sufficient to exempt from toil generations of his posterity. One of the merits, not fully understood by the public, of Mr. Gandhi's *charka* creed is its universality, that is, its application to the rich as well as to the poor. From this standpoint its error is that it ignores intellectual labour. Still there lies behind it the idea that every one must contribute useful labour of some kind to the common stock of society. The practical consequences of such a doctrine would be so revolutionary that its introduction into our polity would be fiercely and stubbornly resisted by the influential part of the community. Why, beggary is quite a respectable profession among us, and some who practise it assure me that it is even lucrative. We have also that large class of people in picturesque robes, *sanyasins* and *fakirs*, who do no stroke of work from day to day, but still think that they have a right to levy a toll on the toil of others. Some of these are really learned and pious people whose teaching and example serve certain spiritual needs

of the community. But the bulk of this class, whose number runs into hundreds of thousands, are pretenders, practising beggary under a thin disguise of religiosity. But if work as a duty is not yet recognised among us, work as a right to which the individual is entitled from the State is still the dream of a visionary. Unemployment may be never so acute, but you cannot go to the State and say, "I am without work and hungry. Employ me or feed me." Just think how far we are behind those advanced communities in which not only is the State bound to find work for each citizen, but it undertakes to find him the precise work for which he is most fitted and through which he can render the greatest service to his fellow-citizens.

RIGHTS END IN DUTIES.

We have now come to a third sense in which rights and duties are inter-related, and in one respect it is more important than the other two. It has been well said that rights are not of much use unless and until they ripen into duties. The exercise of our rights, when pursued without reference to those of others would obviously disturb the harmony of society. To secure the happiest result for the common welfare, it is not enough to refrain in a jealous or grudging spirit from trespassing on the domain

of others. An active solicitude for the feelings of others, with a readiness when necessary to stand aside to let another pass, is an essential part of the ideal citizen's character. Our forefathers seem to have recognised this subordination of one's self as lying at the very root of a well-ordered nature: the word "dharma" certainly lays more emphasis on duties than on rights. The reversal of this emphasis, the clamour that is so audible on all sides for rights, the whole category of duties remaining almost forgotten in the background, is, let us hope, only a passing phase in the transition of a caste-ridden into a democratic polity. But this transition is likely to last for some generations; and within that period, as well as after it, we cannot afford to have our national character warped from its true quality by a failure on the part of teachers and statesmen to enforce the lesson that the habit of excluding duties from the range of one's ordinary vision and allowing it to be engrossed by rights will inevitably make us seekers of our advantage to the detriment of others and in the end convert us into selfish tyrants and oppressors. Is not this habit, cherished for generations, responsible for the social pride and snobbery of the west and the more odious arrogance of caste in India? There are spoilt communities as there are spoilt children. *Noblesse oblige* applies all through life. The freedom of the

press, for instance,—what would it be but a source of untold evil if the conductors of papers and producers of books accepted no standards and obeyed no laws? The case of thoughtless and irresponsible youngsters who attend public meetings is simpler and more striking. Public meetings are the life-breath of democracy. They are a quick and sure means of political education. They create the public opinion on which the policy and action of government are based. To make them difficult, to debase their influence, and mar their value as indications of unfettered thought is to corrupt the very fountain of democracy and make a mockery of the freedom of the people. And yet, through the unchecked license of the rowdy elements in our juvenile population, certain opinions and ideals, not fashionable for the moment but perhaps of great value, are denied this elementary form of self-expression. This practice may bring temporary advantage to the dominant faction, but by its very nature, it tends to become indiscriminate and would soon make public discussion and the discovery of the right line of action at any moment impossible. All parties must combine to discourage and even resist the growth of this vicious habit. If it becomes necessary to appoint a well-disciplined body of stewards or guardians of public meetings, the necessity must be met in the best interests of the community. In the dictionary

of numbers of our youth the right to attend a public meeting is synonymous with the right to disturb and break it up. It would be an evil day when we had to abandon the right of meeting for fear of a few rowdies. What a fuss we make when by order of the executive government a magistrate prohibits a meeting or the police forcibly disperse it! So long as an elementary right is violated or denied, it does not matter by whom. Occasional exuberance of animal spirits may pass; entire masses of men drunk with the spirit of war may get out of control in national crises; but if we seriously mean to cultivate a capacity to manage public affairs, we must no longer allow meetings to be broken up by a few turbulent spirits who take up strategic positions or popular elections to be disfigured and vitiated by manifestations of hooliganism whether voluntary or hired, which till a few years ago were confined to Pondicherry, but are now becoming familiar at our own doors.

WHAT IS A "RIGHT"?

This is a convenient place for considering the nature of a right. In its essence a right is an arrangement, rule, or practice sanctioned by the law of the community and conducive to what we have already described as the highest moral good of the

citizen. Mark the expression "law of the community." It leads to the second important characteristic of a right. It is known to the law of the land and is, therefore, enforceable in the courts, either against the State or against other citizens. In other words, if a right be violated, the aggrieved party has remedies open to him at law by which he may obtain satisfaction. In the third place a citizen's right, such as we are considering, is not of the nature of a monopoly. It must be open to all citizens. If at any time it be not so open, it must be capable of extension to the entire body of persons comprised in the jurisdiction of the State. The franchise in India, for example, though inordinately restricted to-day, is destined to become the property of a wider and wider circle of citizens commensurate with our onward march in political evolution. Can we say this, for example, of the political franchise in South Africa or Kenya ? There we find people of one race or colour in exclusive possession of it, and denying it to a majority of the population on the ground of a difference in race or colour. In fact, I have always felt the greatest difficulty in applying the word "democracy" to these States. Whether we consider the actual features of their polity or the ideals that shape their evolution, they must be classed among the narrow oligarchies of the world.

Ideals shape a People.

Pray do not consider that it is irrelevant or unprofitable to study the ideals that shape the evolution of a people. It is of course possible to stress the ideal and dwell upon it all the time, so that the immediate steps seem pitifully small and the would-be reformer is paralysed by the thought of the vast undone. I have even known the smallest innovations in our religious and social practices resisted with all the resources of dialectic and antiquarian lore by those who brought conflicting ideals before your puzzled mind and called upon you to make a choice between them before you ventured to question the existing order. But merely because a clever man may confound you with a variety of ideals, you must not lose sight of a clearly grasped and ennobling ideal. In fact in this world of ceaseless flux, an ideal is the only fixed object, the only reality. Without a reference to it, no comparison is possible, no due appraisement, no taking stock of where exactly we stand. Let me illustrate my meaning by a quotation from the writings of Sir Henry Jones which bears on this very point. "In a word, except in the light of what is to be, they can pass no judgment on that which is ; without such judgment there could be no object of desire, no end to be attained, no motives of action, and therefore, no life.

It is not necessary, it is not even possible to set aside ideal conceptions in the affairs of citizenship, in order to deal with hard and practical realities. True insight into statesmanship does just the opposite. It catches the gleam of the struggling ideal. Now I wish to universalise this truth, for I think it is applicable to the rights of men as well as of children. Static categories are wrong and misleading in all human matters. The State must never refuse to accord present rights except with a view to the future. It must never limit them to the mere present. The mere present is never the true present where man is concerned, for he is always in the making of what he can become, his end is his true self and full nature, attained perhaps never, but always attaining, always operative, always determining what he verily is and does. For the State to arbitrate on a citizen's right from a static point of view is to deal with man as he never is. In its decisions it employs a criterion which misleads. This is a cardinal principle of wise statesmanship, and when Great Britain deals with India or with any undeveloped nationality, it cannot keep it too constantly in view."

The German Table of Rights

Is there a clearly defined ideal of rights and duties which the British Government in India and

our legislators may keep in constant view ? I venture to think that the present constitution of the German Republic will well repay careful study and reward our quest. The table of rights embodied in it is fuller than any which is found in other modern constitutions. Though born in an hour of acute national distress and humiliation, it is the result of thorough discussion among various schools and represents a just blend of idealism and practical wisdom. I am far from saying that the German people are in free and uninterrupted enjoyment of these rights or that they have devised an efficient body of laws and institutions which we could copy for the realisation of these rights. Such an assertion would be absurdly wide of the truth. But our enquiry in this course of lectures, *viz.*, the 'Rights and Duties of the Indian Citizen,' will be materially assisted and even properly guided by a preliminary survey of the status already laid down for themselves by a people in the vanguard of human experience. Let me now read these rights and duties. I have changed the order to suit my purpose and omitted some items which are rather vague. Rights are placed under 18 heads, one of them with several sub-heads :

1. Liberty of the person.
2. Liberty of movement and settlement (within the State).

3. Liberty of migration and the right to the protection of the State.
4. The inviolability of one's house.
5. The right of property.
6. Freedom of belief and conscience.
7. Sanctity of private correspondence through the post, telegraph or telephone.
8. Freedom of expression of opinion.
9. Equal eligibility for office.
10. Equality before the law.
11. Freedom of public meeting.
12. Freedom of association.
13. Freedom of contract.
14. Freedom of trade and industry.
15. Freedom of marriage.
16. The franchise.
17. Education till the 18th year.
18. Work.

This last head has some interesting aspects. In India the labourer has not attained the position due to him. Even those who champion his cause are suspected of revolutionary tendencies and denounced as enemies of industrial growth. The ordinary student, therefore, will be introduced to a world of strange and bold ideas, when he learns of what labour has achieved in western lands. Mention has already been made of the right that each citizen has

to the work for which he is most fitted or in the alternative to maintenance at public expense. The working man is further entitled to insurance and old age benefits. Then there is a right to take part in industrial organisation. This would require elaborate explanation. Suffice it here to point out that in Germany the whole body of people engaged in industrial occupation is organised so as to form a regular part of the government of the country. In this organisation which forms part of the governmental machinery, each individual workman has his part, however small and humble. Then he is entitled to a dwelling and, if he has a family, to a homestead suitable to its wants. In order to provide such dwellings and homesteads landlords have been placed under an obligation to develop their lands so as to be of the greatest possible use to the community.

AND OF DUTIES.

Coming now to duties, it is a comparatively small list, but each item is a large category.

1. Share of public burdens—taxes, cesses, rates and so on.
2. Honorary office, *e.g.*, Service on Municipal boards.
3. Military Service.
4. Elementary education.

5. Franchise.
6. Work.

You will understand how these last three items come both under rights and duties.

Uses of a Declaration of Rights.

Authorities are not agreed as to the exact value of a declaration of rights like the one from which I have drawn in the constitution of the German Republic. Nearly every modern constitution has such a declaration. British writers, however, have doubted the wisdom and necessity of embodying the legal rights of the citizen as a part of the political constitution. It must be remembered that they have no belief even in a written constitution. Prof. Dicey, whose authority in these matters is second to none, insists that what is required for the protection of the citizen is not a formal statement of his rights, but the provision in the ordinary law of the land of suitable remedies to which he may resort whenever any right is infringed or taken away. He shows by an array of facts and by indisputable reasoning on them that in Great Britain, which knows no declaration of rights, more and surer legal remedies are available to the aggrieved citizen than in countries where the individual's rights are solemnly set forth in writing, and that in consequence there is more

individual freedom enjoyed in daily life by the British citizen than by the citizen of states avowedly republican, and that not only in normal times but even during national exigencies, such as the great war. Of the component parts of the British Empire, the Irish Free State is the only one which includes within its constitution a guarantee of individual rights. It is easy to understand this departure from the British model in a country which has had to pass through unparalleled struggles to Dominion status, and whose people have bitter memories of elementary rights curtailed, trampled upon and even denied during considerable periods.

But if a declaration of rights cannot ensure the enjoyment of individual liberty and is not indispensable, it still has its uses and great uses too. It is a great instrument of political education. As a writer on the German constitution puts it, it gives the juridical background of a people's public life, in other words the fundamental legal and juridical notions upon which political institutions are based. In the distractions of public life, in the busy interaction and conflict of diverse interests, an uninstructed person, concerned only with his own minute aspect of affairs, is apt to forget, even if he knew, the fundamentals of political action, the proprieties which may not be violated, the guarantees of justice and fairplay which must never be brought into

jeopardy. An article in the constitution to which I have made frequent allusion requires that every student, when he leaves school in his 18th year, should be given a copy of the constitution. Surely much may be expected of a generation which from early boyhood has been made familiar with its legal rights and duties, and has, vividly present to its consciousness, a definite and clearly worded standard by which all public action should be judged. It would know, as if by instinct, and resist by every means in its power, as soon as any law was proposed which threatened any of its primary privileges. If an executive officer trespassed on any of the liberties which the people have been taught to cherish as their birthright, he would speedily be brought to book. How one wishes that the members of our Legislative Assembly had been so taught when they had to consider the continuance among our laws of the Bengal Regulation III of 1818! They would then never have voted as they actually did. A law more subversive of the most fundamental of our fundamental liberties, it is difficult to conceive. To arm the executive permanently with the power to take away a citizen, to lock him up, and refuse ever to bring him up for trial is nearly a direct repeal of the liberty which I have placed at the head of the list—the liberty of the person. And yet a majority was found to sanction this deadly blow at the very basis

of citizenship. I felt utterly humiliated when I read the proceedings of the Assembly and for a moment wondered whether it would be wise to put more law-making power, more constitutional authority into the hands of a body who knew so little about their business. If every candidate at an election and every voter had read a declaration of rights half a dozen times, India might be a safe home for democracy. That is a suggestion for the professor and the schoolmaster to consider.

LECTURE II

Liberty of Person and Liberty of Movement. Restrictions not justified.

Before the several rights or liberties are taken up for consideration, a few general observations must be made which it will be useful to remember during the whole course. No right can be enjoyed by any citizen without restrictions. These are imposed for the benefit of other citizens and of the whole community. They fall into two classes, those which are common to all civilized communities and those which are peculiar to India. The former are well known to students of law and are found all over our statute book, especially in the Penal Code. Most of them bear the stamp of social necessity on their very face and are unobjectionable. As a rule I do not propose to deal with them. My business is rather with the second class, those which are not paralleled elsewhere or are paralleled only in what may be called backward or diseased communities. Regarding each such restriction, we may well ask what special circumstances justify

it in this country, and if no satisfactory justification is forthcoming, we may demand its repeal. It will be found, however, that the executive government are ready to defend every restriction as necessitated by the conditions of India. These conditions, as stated by the executive, generally involve some censure or unfavourable comment on the character and habits of our people, and so it is easy to understand the warmth and bitterness of every debate on these restrictions. We shall find as we proceed that these restrictions place arbitrary and summary powers in the hands of executive officials, who are thus enabled to abridge or suspend the primary rights of the citizen; that they are tempted to use these powers not only during the emergencies for which they are meant, but on comparatively slight provocation and without a due sense of responsibility; and that the injured citizen has on such occasions either no remedies or only shadowy remedies against those who have injured him.

SAME WORDS BUT HOW DIFFERENT.

It is urged by the apologists of the executive that some of these exceptional powers are analogous to those which exist in English law and are frequently embodied in the same legal phraseology.

Yes ; there is much parity of language and some similarity in the substance of the restrictions. But you would be wrong to infer from this parallelism that the individual citizen in India actually enjoys the same amount of liberty as the individual citizen in England. Not by any means, for while in England, owing to the constant vigilance of the courts and the power of resistance of the individual citizen, the executive are kept well in check, here the weakness of public opinion and the comparatively restricted sphere in which even our courts work render the executive too free of control. Take, for instance, the law of sedition. The language of section 124-A and similar provisions of the Penal Code is a copy, as nearly as may be, of the language of the English law of sedition. But we know only too well that, while that law in England is brought into operation with the greatest caution and the executive bear a lot of provocation before they resort to it, in India there is almost nothing by way of free criticism which the executive do not resent and, if only they care, do not also bring up before the courts. Take again the sanctity of private postal correspondence. It must be admitted that exigencies of the State may require that certain people's personal letters should be intercepted and examined. In England the force of public opinion is so strong that

no Secretary of State dare order it in any particular case unless he was very strongly fortified by the circumstances. You all know how frequently that power is used in this country. Of course when challenged they generally deny the fact—or they prevaricate. But we know, not only from our countrymen, but from English visitors to this country somewhat partial to our political movement, well authenticated instances could be produced of the executive having interfered with private communications upon comparatively slight provocation.

Some Bad Laws Repealed.

Before I pass on I must mention with gratitude and gratification the fact that in the first days of our reformed constitution there was such co-operation between the executive and the members of the central legislature that we could induce them to undertake a fairly large measure of ameliorative legislation. Many repressive laws were repealed. Some no doubt were left on our statute books. But we cannot forget, and I will implore you never to let your vexation or resentment carry you so far as to forget, that there were a great many enactments which the executive at that time were willing to repeal and did repeal. I will read a list of these; it

is really impressive. The Bengal Martial Law Regulation X of 1804, a similar Madras Regulation VII of 1808, State Offences Act XI of 1857, the Incitement to Offences Act VII of 1908, the first part of the Indian Criminal Law Amendment Act XIV of 1908, the Press Act I of 1910 and the Anarchical and Revolutionary Crimes Act XI of 1919, otherwise known by the name of the Rowlatt Act. Besides repealing these enactments, the Government undertook, with the full consent, I am happy to say, of the representatives of the European community, to remove most of the racial distinctions between European and Indian which had been permitted too long to disgrace our statute book. There are four of these discriminations still remaining, but they are comparatively slight and certainly do not constitute a deduction from the credit that I have given in this somewhat brief survey. Then we have another important fact to chronicle before we leave this part. In 1923 the Assembly enacted a certain provision regarding the Habeas Corpus which has removed the very serious defect that was left in that part of our law. Until that year the High Courts in our country could not issue writs of Habeas Corpus in favour of Indian residents outside the Presidency towns ; that gap has now been filled up. This is no small point, as many will

testify who have experience of the practical working of the law here.

Tribute to the Judiciary.

We have now to take up the several liberties in order. In the natural order liberty of person comes earliest of all, and curiously enough, it is the one for which the greatest struggles have had to be gone through. What is this liberty of person? Stated briefly and without an attempt at legal precision, which, if I aimed at, I could not reach, not being a lawyer, the liberty of person of an individual may be stated in this way: No man can be restricted as to his person unless it could be shown that he was charged with some offence and had to be taken to the court for trial or that, the trial being completed, he had been convicted and sentenced to imprisonment. No exceptions are permitted and the English law, it is claimed by its exponents with much justifiable pride, has left no gap at all as to the remedies at the disposal of the individual citizen whenever he feels aggrieved on this matter. The remedies are three. The first is Habeas Corpus, then prosecution of the aggressor and thirdly, civil action for damages in a court of law. You will see at once that all these remedies are only obtainable in courts of law. At

this point it will be most convenient to pay a tribute, certainly not of much value as coming from me, but a tribute nevertheless which every one of us must pay in our hearts, to the high character and independence of the English judiciary. Judges in England for many centuries have considered it their privilege, nay, indeed their primary duty, to protect the citizen against the aggression of the King and his officers, and they have never hesitated to throw round him their protection, mighty and infallible as it was, whenever the executive threatened to get out of hand. In fact it is asserted that much of the liberty now enjoyed by English people is a result of judge-made law. I am no great judge of the matter, but I tell you the general verdict of the people when I say that in this country the judiciary have not maintained the same high level of vigilance in protecting the individual citizen. The causes it is not for me to enquire into, nor will I say anything about the judiciary or its personnel. They have recently stiffened the law of Contempt of Courts in this country. I must therefore impose some restraint on my tongue. Nevertheless, I think it would not be unfair to say that in that type of cases which we generally call political, the judiciary in this country, for reasons not difficult to guess, have been more anxious to sympathise with the attitude of the execu-

tive than with the plight of the oppressed citizen. When I have made that remark, I am fully gratified, and perhaps I shall carry your judgment with me when I say that, although we may have some legitimate ground of complaint against the courts in this land, we ought to recognise that they are our only shield against the overgrown executive in this country, and that it will not do for us, however swayed by passion and by disappointment, to take any part in that iconoclastic work which is afoot of reducing the prestige of the judiciary. Their independence is an asset of incalculable value in our onward political evolution. The more they are protected from the criticism of the executive, the higher we esteem them, the more we shall find help and co-operation from them, always within the limits of law of course, whenever we have to grapple with the executive. It is they and they alone to whom we have to look in this matter, and one wonders how light-hearted our public men must be when they pronounce hasty and rash condemnation of the excessive salaries paid to the judiciary. They may be excessive from any point of view you please, but you have to consider this matter with exceeding care and circumspection. You cannot touch the salaries of the judiciary without at the same time effecting

a general all-round reduction in the salaries of the highest officials. If you lower the standing of judges—they are human beings like ourselves, they have families and standards of living—if you make it difficult for the strongest and wisest and most independent-hearted men at the bar to take up these positions, you would fill them with a second-rate set of men to whom promotion to executive appointments, to commissions of sorts and other preferment will be too strong a temptation. A judge, when once he is promoted to that seat, ought not to have to look to anything higher. He is there to lay down the law, fearless of the executive, not open to a bribe, not open to the least suggestion of a temptation. Beware how you touch either the prestige or the character or the privileged and honoured position of courts of law.

And to the Bar.

Let me add a word about the bar. For no judiciary can function at its topmost level unless there be a strong and independent bar from whom not only are the judges chosen, but to whom and to whose sympathy and support they have constantly to look in their work. I have sometimes indulged in strong criticism of my friends of the bar. Open

to criticism they certainly are, but let us acknowledge that if the judiciary, whose paramount position in the public polity I have already mentioned, are at all to be maintained in purity, in independence, in strength to stand by the people, the bar too must be honest, the bar too must be treated with consideration, and I have never wavered in my feeling that to the bar, high and low, functioning whether it be in great cities or in mofussil stations, to the bar of all grades the thanks of the public are always due for being ready to champion the rights of the citizen against the executive. Some, of course, are by their professional etiquette obliged to champion the executive against us. That is inevitable. The assistance of the bar must be open even to the executive.

Restrictions : Open Trial Essential.

Now let me proceed to mention what I consider to be arbitrary restrictions on the liberty of the citizen. In our Government of India Act Section 111 gives the Governor-General in Council a very big prerogative. A written order from him will be a sufficient justification for any act called in question before the High Court in its original jurisdiction. If, for instance, a citizen is arrested and detained

without apparent cause, the officer who carries out the Governor-General's bidding has only to produce a written order, and the court can say nothing thereafter. So there is Section 126 which gives the Governor-General or the Governor in Council of a Province, power to arrest and detain any person suspected of dangerous and illicit correspondence with Maharajas, Chiefs, Zamindars and so forth. I understand that that Section has never been used, but although it has never been used, it will always lie there, it will not be repealed easily. Then there are a whole host of Regulations of which the prototype is Regulation III of Bengal, 1818. That Regulation was made for a certain purpose ; but now it is frequently used by the executive for other purposes. The courts here cannot do anything in that matter. They cannot issue a writ of *Habeas Corpus*. If I am suddenly arrested under one of these enactments, there is no use in my going to a judge of the High Court. All he can say, after turning over the pages and seeing that the order is properly drawn up and follows the wording of the enactment, is "God help you." The way in which these Regulations have been used, especially in Bengal, is something to which we can never be blind. You have to be in Bengal, especially in East Bengal, to gauge the acuteness of the

anguish that prevails in that harried province. Thousands of people have been dealt with under this provision. The original Regulation contained many safeguards for the proper treatment of these people—allowances to be made to them, their health and comfort to be periodically reported on,—but these safeguards are sometimes neglected, as Lieut.-Col. Mulvany's report, recently published, will show you. Courts cannot interfere in that matter either. It rouses the most bitter contention, the way in which this enactment is frequently used by the executive. I believe the answer they would make is that there is terrorism in the land and it can only be put down by similar terrorism on their part, but that would be an admission that they worked the regulation so as to terrorise. Then there is the power conferred upon the Governor-General in his personal capacity under Section 72 of the same Act, to pass an Ordinance with life for six months for the peace and tranquillity of British India or any part thereof in an emergency. This power has been used sometimes for good, as for instance, when indentured labour was suspended, another time again very recently when the Cotton Excise was suspended, but the same power is also used for purposes the reverse of this. Only the other day the Governor-General issued an Ordinance, the provisions of which were bodily taken

over from the repealed Rowlatt Act, and before six months were over they took good care that that Ordinance should be kept alive by means of an enactment put on the Bengal Statute Book, which again, being opposed by the people and their representatives, was passed on the sole authority of the Governor. It has to be in force for 5 years, and I hope our Bengal Legislative Council will then be strong enough to prevent its re-enactment. They generally say to us in passing these laws, "We use them against the enemies of society. Why should honest men object?" That is the ostensible ground of such action. It is expected that the men against whom they have made up their minds are to be considered by the whole community to be guilty persons. The executive are satisfied, and we must be satisfied too! That is the line of argument they take. Otherwise, how could the head of the province say, for instance, "These men whose liberty we interfere with are outlaws. Why should honest newspapers and honest publicists cry out? They are in no danger so long as they are honest." There is something absolutely defiant of decency in this statement. I want to know who an outlaw is nowadays. It is an obsolescent idea that you can outlaw any person. A man, howsoever guilty, is entitled to be tried in the ordinary way before a court

of law. The executive cannot go and pronounce outlawry against him and ask the whole community to sit still under it. Nevertheless, the Governor permitted himself the indiscretion of saying to the public that the men against whom he had allowed action of this kind to be taken were all outlaws. Even guilty persons have rights under our law. They must be accused, they must be allowed to plead, they must be allowed to confront the accusers and their witnesses. The Court must sit in judgment upon the whole matter. Another plea usually urged is that these powers are seldom used except after the most careful examination and after the most exalted executive official in the land has satisfied himself personally that there is good ground for proceeding against the individual. The Viceroy tells you, the Governor tells you, that he has personally examined the papers regarding every one and in his mind there is no shadow of doubt as to his guilt. If that be the case courts may well cease to be. Why are the courts there at all? If all that is necessary is for the executive to satisfy themselves after careful examination, then there need be no such thing as a judicial process. There is no such thing as establishing the guilt of a man, till he has had a fair and open trial. I will not trust even a judge if he sits in private and carries on an enquiry

according to a special regulation. Even a judge may err, judicially minded though he be, if he merely examines the papers and hears only one side. You should never trust that justice has been done till an accused person has had his trial in the regular way, in a regular court of law, conducted in the open.

Compare Ireland.

They say further these enactments have a parallel in Ireland. The people in Ireland, it is true, are as much in danger from the executive as we are. But even Ireland affords an insufficient parallel to the present state of things in India. The other day it was an Irishman who said in the Assembly that in his country, even after the establishment of Dominion Home Rule, there were laws similar to the laws we complain of in India, restricting the liberty of person, authorising indiscriminate arrests and detentions without any prospect of trial. That statement, however, is highly coloured. As a matter of fact, after the Irish Free State was established, they passed what was known as the Public Safety Act with life for six months and then they extended it for a year. During the last few months they have repealed the whole of this enactment and now the regular law prevails in Ireland. And yet you must

remember that Ireland was disturbed and harried in a sense ten times more intense than anything that has happened in India.

All in Defence of the White Man.

Our arbitrary laws, however, have got on to the statute book and threaten to remain there for ever. The remarkable thing is that, if you tell an Englishman about these things, he says to you, as the Home Member said the other day and others have said to me in private, "Who are you people? It is to us the odious nature of an arbitrary law is more apparent. It is we who in our country enjoy the utmost liberty of person, that are shocked that such laws should have to be made. You cannot be shocked, you who have always been victims, more than we are." And yet they pass these laws and execute them. It is a very difficult type of mentality to understand!

Some years ago, when the Rowlatt Act was about to be passed in the old Supreme Legislative Council, I expressed surprise that those who were friends of freedom at home should become its enemies abroad, and ventured the guess that it was due to a desire to be forearmed against the expected political reforms which might endanger the interests of Britishers and the lives of their women and children.

Of course my remark at the time was deeply resented by the representatives of the European community. The researches of a friend of mine who has knowledge of the English Law, have made available to me certain judgments of the Privy Council in which it would appear that eminent judges who had to consider such enactments in India and in the Colonies have also been troubled in mind and asked themselves how they could uphold the suppression of the liberties of the subject. But they reconciled themselves to the disagreeable necessity by a process of reasoning somewhat to this effect : "No doubt our system cannot tolerate these laws; we shall never look at them in England. But England is a settled civilized country. These laws are applicable to India and the Colonies, where a handful of white people have to maintain themselves against lawless, sometimes violent, people. It may well be, therefore, that these laws are required ; we cannot impugn these from the high academic principles of British jurisprudence. These un-British laws must, therefore, be allowed full operation in those areas."

Some Judgments.

A few striking passages from well-known judgments containing such sentiments must be given here :—

Lord Halsbury, L.C., said in 10 A.C. (p. 678) Reil *vs*. The Queen :

' The words of the statute (to make provision for the administration, peace, order and good government of the territory) are apt to authorise the utmost discretion of enactment for the attainment of the objects pointed to. They are words under which the widest departure from criminal procedure as it is known and practised in this country have been authorised in Her Majesty's Indian Empire. Forms of procedure unknown to the English Common Law have there been established and acted upon, and to throw the least doubt upon the validity of powers conferred by those words would have a widely mischievous consequence."

As to the legality of laws prescribing forms of procedure different from those prevailing in England and authorising the exercise of the widest discretion on the part of the executive in the territories situated like India, there have been certain pronouncements by the Judicial Committee and by the courts in England which it would not be improper to refer to at this stage. In The King *vs*. Earl of Crewe exparte *Sekgome*, where the question was as to the legality of the detention of the chief of a native tribe in the Bechuanaland Protectorate under powers conferred by an Order in Council on the ground

that his detention was necessary for the preservation of peace within the Protectorate, it was held that the detention was lawful and was *intra vires* of the High Commissioner. The Court of Appeal, consisting of Vaughan Williams, Farwell, and Kennedy, Lords Justices, discussed the question whether the Protectorate was a foreign country within the meaning of the Foreign Jurisdiction Act 1890 and came to the conclusion that it was and that the proclamation issued by the High Commissioner was validly made under the powers conferred by the Order in Council.

Vaughan Williams, L. J., said: "The idea that there may be an established system of law to which a man owes allegiance and that at any moment he may be deprived of the protection of that law is an idea not easily accepted by English lawyers. It would be more convenient to our love as a nation of liberty and justice to act on the eloquent words of Lord Watson in Sprig *vs.* Sigcau. . . . It is made less difficult if one remembers that the Protectorate is over a country in which a few dominant civilised men have to control a great multitude of the semi-barbarous."

To the argument that the *Habeas Corpus* Acts were applicable to the Protectorate and that the Proclamation could not effect the repeal of the Habeas Corpus Act, Farwell, L.J., said: "It is said

that the Habeas Corpus Acts are the bulwarks of liberty in our country, but even in the United Kingdom the Habeas Corpus Acts have been suspended by Act of Parliament when the public safety required. . . . . . The truth is that in countries inhabited by a native tribe who largely outnumber the white population, such Acts, although bulwarks of liberty in the United Kingdom, might, if applied there, well prove the death warrant of the whites. When the State takes the responsibility of Protectorates over such territories, its first duty is to secure the safety of the white population by whom it occupies the land, and such duty can best be performed by a responsible officer on the spot. There are many objections to the government of such countries from Downing Street, but the Governor's position would be impossible if he were to be controlled by the courts here acting on principles admirable when applied to an ancient well-ordered state but ruinous when applied to semi-savage tribes. This view is supported by Reil *vs.* The Queen and there is nothing contrary to it in Sprig *vs.* Sigcau which turns simply on the construction of a clause in a Colonial Act and Lord Watson's observations are expressly applied to a colony having a settled system of criminal law and criminal tribunals, a state of things very different from that existing in the Bechuanaland Protectorate."

Kennedy, L. J. (quoting the words of a paragraph from an Order in Council of May 9, 1871): "They ought to receive, as Lord Halsbury, L.C., insisted in delivering the judgment of the Privy Council in Reil *vs.* The Queen (1) with respect to powers of the Canadian Parliament to legislate " for peace, order, and good government," a liberal interpretation in the sense that may rightly be held to justify provisions widely differing from those which have been made in this country for the same ends. Such an interpretation is especially just and necessary where, as is the case here, the trustee has to govern a large unsettled territory, peopled by lawless and warlike savages, who outnumber the European inhabitants by more than one hundred to one."

An authority of a totally different kind, Mr. Gandhi, who is a shrewd judge of men and never, even for polemical effect, indulges in harsh or unjust censure, wrote recently in the public press: "The Government, entrenching itself behind a wall of lies and the force of its bayonets, treats the complaint with contempt in the certain belief that the detention and ill-treatment of prisoners are necessary for the safety of the Englishmen it represents." There again is valuable and independent testimony as to the probable origin of these laws. The English people in India are so nervous—it is a state of feeling

with which we have to reckon. We can only hope that they have now convinced themselves, after about a hundred and fifty years of contact with us, that we are not barbarous and that we are not thirsting for the blood of their wives and children—that it would be a sad day indeed when they confirmed us in the belief that, so long as they stayed in this country, our liberties must be curtailed in these arbitrary ways. Then there would be no room for suspecting whether we are ever going to get Home Rule and Responsible Government. It behoves them—I appeal to them in all solemnity—to bring Indian affairs within the influence of British law and British jurisprudence and not to keep us any more under barbarous laws, suitable to Bechuanaland or Basutoland but entirely unsuited to India, which they have solemnly sworn through their King and Parliament and through every channel of authority in England to take along the path of the evolution of Responsible Government until it is fully established.

Recent Anti-Indian Legislation in Burma.

Let us now examine the second most important right, which is closely allied to the liberty of person, namely, the liberty of free movement and settlement in any part of the State. This is recognised in all

jurisprudence—a citizen is free to move about in the State and he is also free to settle where he pleases. Of course, there are some people whose liberty is legitimately curtailed. For instance, there are criminal tribes here whose free movement we curtail. There are people who come under Section 565 of the Cr. P. C., whom we restrict as to their movement. There are also one or two other cases where legitimate restrictions have to be imposed upon the free movement of people. Otherwise the citizen of an advanced state is generally unhampered. So we were shocked the other day when His Excellency the Viceroy gave his assent to the enactment in the Burma Legislative Council called the Burma Criminals Expulsion Act, by which certain Indians amongst other classes of people convicted of offences could be kept out of Burma altogether. In the Assembly this matter was discussed the other day, and its constitutional aspect was also examined, as it had been examined in Burma. Some spokesmen of Government professed to be surprised that such very necessary and simple legislation should be questioned by enlightened Indians.

A Comparison.

Just listen to some passages from the constitutions of other countries in which it is provided

expressly that the citizen must be permitted freely to move about and settle where he likes within the State. The United States Association has this provision: "Citizens of each State shall be entitled to all privileges and amenities of citizens in the several States"—which, I understand, does include this right of free movement and settlement. The Mexican Constitution: "Every one has the right to enter and leave the republic, to travel through its territory and change his residence without the necessity of a letter of security, passport for safe conduct or any other similar requirement." Australia: "A subject of the Queen"—no citizen, mind you—"resident in any State shall not in any other State be subject to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in any other State." The German Constitution provides: "Every German has the same rights and duties in any State of the Reich as the subjects of any other State. All Germans enjoy the right of domicile within the whole Reich. Every one has the right to stay in any part of the Realm that he chooses, to settle there, to acquire landed property and pursue any means of livelihood. Restrictions may be imposed only by the law of the Reich." There is, however, one constitution which seems to make a provision analogous to

the provision to which we object in the Burman statute book. "Every Swiss citizen has a right to remain in any part of Switzerland subject to the production of a certificate of origin or similar token. The right of settlement may also be withdrawn from persons who are repeatedly sentenced for grave misdemeanours and from persons who become a permanent burden upon public charity and whose commune or canteen of origin refuses to provide adequate response for them after being officially requested to provide." The first part of it seems to be somewhat similar to our enactment. But the language here is "who have been repeatedly sentenced for grave misdemeanours." The Burman law, which was apparently passed in an atmosphere of political ill-will, has a schedule of crimes. Would you believe it?—one of the sections therein included is 124-A (sedition). If a person is convicted under that section, he may be expelled from Burma. That is typical of certain other sections. This is obviously power to be lodged in the hands of the executive to prevent legitimate political agitation in that country. For you must remember Burma still continues to be the happy hunting ground of the executive. The people are lovable and in a state of Arcadian simplicity. And the Britisher is anxious apparently that the Indian agitator should not be allowed to poison that

sequestered spot. It is astonishing how lightly they have passed a law of that kind and how it has been sanctioned by the Viceroy. It may be, as in Switzerland, necessary sometimes to take power to keep out criminals of a certain type. But why political agitators?—I cannot understand. I must, however, while I lay this objection solemnly down, point out to you that the non-official European community to a man, whether in Rangoon where it was first discussed, or in the Assembly where it was afterwards discussed, stood by us loyally. The official European, however, was adamant. He was quite clear that this class of Indian was a danger in Burma.

Indians Overseas.

That is so far as the Indian Empire is concerned. But when I talk of free movement and settlement, your minds will necessarily go beyond the Indian Empire; and you will ask, how do we stand with regard to the British Empire? Are we free to travel about freely and settle where we like, wherever the Union Jack flies? The answer is obvious. We are aware of the kind of thing that is happening in South Africa. It does not require much rhetoric on my part to touch your hearts in respect of that unfortunate grievance. Nevertheless,

at the risk of being misunderstood a little, may I ask you, now that we are supposed to be carrying on a calm enquiry into the judicial character of these restrictions, to consider some of the great difficulties which lie before us in respect of this grievance? I am not behind any one, as you know, in feeling the nature of this grievance. It is essentially an iniquity, if I may say so, of an un-Christian character. Nevertheless we have, like wise people, to find out the strength of the enemy's case and to pitch our expectations accordingly. There is no use in knocking our heads against a stone wall.

No British Empire Citizen.

Now, we have been considering rights which may be called legal rights, rights the violation of which we can test in a court of law. This is not such a right. I want you to realise that. There is a law on this subject prevailing in British India, there is a law on this subject prevailing in Great Britain, and there is a law on this subject prevailing in each of the Dominions; but there is no law on this subject which binds the whole Empire together. There is no law as understood in the rigid sense of the word. But there are some understandings based on practice or political theory. When these under-

standings are violated, we cannot seek the protection of the Supreme Court or of the Privy Council. They are still in the nature of what may be roughly called political rights, which is only a synonym for political aspirations, a thing still to be attained. Many eminent lawyers in Great Britain and in the Dominions are of opinion that this is only popularly described as a right, that there is in reality no such thing as a British Empire citizen. There is such a thing as British Empire subjecthood, which entitles you to the bare protection of the King so long as you do not commit a crime. But there is nothing more, they say. On the other hand there is a positive enactment and there are judgments of the Privy Council to show that, when you move out from one part of the Empire to another, while you preserve the status of your own country of origin, you can only acquire such rights and privileges as the country of settlement chooses to give you. Section 26 of the Act of 1914 called the British Naturalisation of Aliens Act recognises and tolerates the power of each Dominion and each possession (India included) whether there be a legislature or not, to treat differentially different classes of His Majesty's subjects. The law, therefore, is against us. If that is the case, you will not be surprised to hear my next statement, which you must remember also. It is all meant to moderate

your disappointment and your anguish when you think of this matter. Mind you the Dominions have asserted before, and have more than once exercised, the right of keeping out Englishmen when they consider that a desirable course. It is not, therefore, against us exclusively that these restrictions are directed.

WHITE *vs.* COLOURED.

Moreover, let us also remember that these restrictions raise, not merely an issue between Indians and the white inhabitants settled in these Dominions, but an issue of far wider extent and far greater import fraught with peril to the whole of the human race. This is but an aspect and by no means the most aggravating aspect of a conflict between the white and the coloured populations which seems to be developing all over the globe. The whites, as you know, have grabbed and grabbed and taken possession of a great extent of the earth's surface by all manner of means, and made it their own and kept the vastly greater coloured population of the world confined to very narrow areas. That has wounded the pride and roused the resentment, not merely of Indians—that is not much—but of people of far greater power, independence and

sensitiveness in these matters than we are—the Japanese. They are having a bitter quarrel over this with America and with other powers. They tried to raise it when the Treaty of Versailles was still in the making. You may remember, some of you who read the papers at the time, the Japanese maintained stoutly that in the Treaty of Versailles there should be embodied a declaration that there should be no racial inequality on the face of the earth. But they were prevented from carrying out that idea. They tried hard, but they had to yield. Now they are carrying on a desperate struggle, peacefully so far, with Americans in this matter. Where they have failed ignominiously, is it not wise on our part, is it not necessary, to moderate our expectations and not throw up our hands in despair? Really we have got to consider the case in that broad world-aspect. Some of you may say, as I said indiscreetly in British Columbia: "But what is this? The Japanese are not British subjects. They owe no allegiance to the King-Emperor. When they go and settle in Australia or in Canada, Australians and Canadians may well discriminate against them. But we are different. We belong to the British Empire. We honour the Union Jack as much as they. How can we be treated differently?" What do you think was the answer I got? "The British Empire! We are

fed up with this talk of empire and imperial outlook and imperial obligations. We have no use for it all when what we regard as our basic rights are threatened."

THREE AUTHORITIES.

So then let us be clear that in this contest we do not stand on established law, but on the ground of inter-imperial propriety, on the political theory of the proper relation of classes of British subjects one to another. In our own minds we have no doubt where the right lies from an ethical or imperial point of view. Before the next topic is taken up, you will perhaps be helped to a proper appreciation of the nature and difficulty of the issues involved by perusing the opinions of three eminent authorities. Dicey is an impartial imperialist ; Sapru you may trust to put our case at the strongest ; Smuts is a thorough-going, but subtle, exponent of the opposite side.

Dicey: *Law of the Constitution* (pp. xxxvi and xxxvii).

"It must, lastly, be noted, that while the inhabitants of England and of the Dominions express at each Conference their honest pleasure in Imperial unity, the growth of Imperialism already causes to

many patriotic men one disappointment. Events suggest that it may turn out difficult, or even impossible, to establish throughout the Empire that equal citizenship of all British subjects which exists in the United Kingdom and which Englishmen in the middle of the nineteenth century hoped to see established throughout the length and breadth of the Empire.

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"Speaking broadly, every British subject has in England at the present day the same political rights as every natural-born Englishman, *e.g.*, an Englishman born in England and the son of English parents settled in England. Thus a British subject, whatever be the place of his birth, or the race to which he belongs, or I may now add the religion which he professes, has, with the rarest possible exceptions, the same right to settle or to trade in England which is possessed by a natural-born Englishman. He has further exactly the same political rights. He can, if he satisfies the requirements of the English Electoral law, vote for a member of Parliament; he can, if he commends himself to an English constituency, take his seat as a member of Parliament. There is no law which forbids any British subject, wherever he be born, or to whatever race he belongs, to become

a member of the English Cabinet or a Prime Minister. Of course it will be said that it is extremely improbable that the offices I have mentioned will, in fact, be filled by men who are not in reality Englishmen by race. This remark to a certain extent is true, though it is not wholly true. But the possession of theoretically equal political rights does certainly give in England, or rather to be strictly accurate, in the United Kingdom, to every British subject an equality which some British subjects do not possess in some of the Dominions."

Sir Tej Bahadur Sapru: *The Study of Constitutional Law*—an Address delivered to the Benares Hindu University.

"Now British nationality, thus acquired by a foreigner through the process of naturalisation, confers on him the full status of a natural-born British subject. This principle, however, we are told by constitutional writers, should not be pressed too far, for, it is maintained by them that this fact does not prevent any part of the Empire limiting the rights, political and civil, of any British subject. This is the inevitable consequence of responsible self-government. What the reactions of this doctrine may be on the strength of the tie which unites or ought to unite one part of the Empire to the other is a problem

for the consideration of the statesman rather than for the constitutional lawyer. Meanwhile even the constitutional lawyer may indulge in the hope that a larger conception of Imperial citizenship resting on allegiance to the common sovereign may not be impossible to achieve."

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"Might not the constitutional lawyer, therefore, ask if there is not room enough for a further development of the idea of nationality within the Empire itself without infringing the freedom of the self-governing members of that Empire?"

Smuts. Imperial Conference, 1923.

"The Indian claim for equal franchise rights in the Empire outside of India arises, in my opinion, from a misconception of the nature of British citizenship. This misconception is not confined to India, but is fairly general, and the Conference would do not only India but the whole Empire an important service by its removal. The misconception arises, not from the fact, but from the assumption, that all subjects of the King are equal, that in an Empire where there is a common King there should be a common and equal citizenship, and that all differences and distinctions in citizen rights are wrong in

principle. Hence it is claimed that, whether a British subject has or has not political rights in his country of origin, he should, on migration to another part of the Empire where British subjects enjoy full political rights, be entitled automatically to the enjoyment of these rights. It is on this basis that equal political rights are claimed for Indians who live in the Dominions or Colonies outside of India.

"It is of course clear that the assumption on which the claim is based is wrong. There is no equality of British citizenship throughout the Empire. On the contrary, there is every imaginable difference. . . . . There is no common equal British citizenship in the Empire, and it is quite wrong for a British subject to claim equality of rights in any part of the Empire to which he has migrated or where he happens to be living.

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"The common Kingship is the binding link between the parts of the Empire; it is not a source from which private citizens will derive their rights. They will derive their rights simply and solely from the authority of the State in which they live."

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"I would therefore suggest that for the resolution of the last conference on the subject there be sub-

stituted a resolution affirming the right of each portion of the Empire to regulate citizenship as well as immigration as domestic questions for its own handling and not affecting the status or dignity of other portions of the Empire, and expressing the opinion that provisions for reciprocal treatment of the nationals of the States of the Empire should not be looked upon as unfriendly or otherwise affecting the good relations of States *inter se*. It would thus be left to the good sense of each State of the Empire to say what citizen rights shall be enjoyed, and by whom, within their territorial jurisdiction, and no State of the Empire should have claim to force its citizens on any other State or resent their exclusion or special treatment by the latter."

LECTURE III

THE EXECUTIVE.

THE CONSCIENCE CLAUSE.

Under the head of freedom of religious belief the student of Indian citizenship has not much complaint to make. We seem to enjoy it almost to the full, especially after Act XXI of 1850, which removed the disabilities attendant on change of religion. I said "almost" for the reason that there is a minor right under this head, minor no doubt, but still of some significance, which has been denied to the people of India. It is what is called the conscience clause in the Education Code. In every civilised country, wherever State money is given as grant-in-aid, children are permitted by law to receive the benefits of secular education without being obliged at the same time, as they are for instance in institutions run by Protestant missions in this country, to submit to religious indoctrination. It is a pity that this right, established so long ago as 1870 in the spacious Gladstonian regime in England,

should be only imperfectly understood in this country even in the educational world.

I remember shocking some of my brother-educationists a few years ago by starting the subject in the Madras Presidency. It is gratifying that, through the action of public-spirited legislators in other parts of the country, the conscience clause is being introduced in our education system. I consider my own Presidency, the members of the University Senate and perhaps also members of the Legislative Council somewhat backward, because I find that they are not yet fully conversant with the nature and scope of the conscience clause. There is still too much domination in the educational sphere of the Protestant missionary. It is surprising too that the Protestant missionary is unwilling to part with a privilege which he has obtained through political domination and waits till he is deprived of it by the action of our legislators. I had hoped otherwise.

In Ireland, where the conscience clause is much prized because it was denied for a long time, they have thought it necessary to put it into their Fundamental Rights section, a rather strange proceeding, considering that this is only a minor right. This is how the clause runs : "No law may be made either directly or indirectly to affect prejudicially the right

of any child to attend a school receiving public money without attending religious instruction at the school''.

LIBERTY OF THE PRESS.

I have now come to the liberty of expression of opinion, including under this expression not merely freedom of speech and writing, but what is commonly called freedom of the Press. Here too there are legitimate and illegitimate restrictions, but I would ask you to remember that the Press Act, against which we rebelled so very much some years ago, is no longer on our statute book. This was repealed during the brief period of cordial co-operation in the new regime between the Government and non-official benches. But when the Press Act was repealed, they put into the existing enactments certain provisions intended to safeguard the State against excesses on the part of the Press. To these restrictions there is not much legitimate objection, and therefore I will merely mention them. Under Section 99 (*a*) to (*g*) newly introduced in the Criminal Procedure Code, seditious books and newspapers may be forfeited by Government Order and the press may be searched for the same. But it is not objectionable for the reason that the aggrieved party has access to the

court. It is provided that such action on the part of the executive should be appealable to a special bench of three judges of the high court, and I think this is satisfactory from the point of view of the subject. Similar sections are to be found in the Post Office Act and in the Sea Customs Act. In passing I will only mention the Indian States Prevention of Disaffection Act, commonly called the Princes Protection Act, which was passed on the single responsibility of the Governor-General. It is not free from objection, but the topic is not so important as to merit special attention in this brief survey.

Equal Eligibility to Public Office.

The next right to be considered is eligibility to public office; its full title should be equal eligibility of all citizens to public offices. Of course you must understand this means qualified citizens. Our Charter Act of 1833, as you know, contained for the first time a provision to this effect. It has been since repeated frequently, and in the last Government of India Act it is embodied in Section 96. The words are famous, but might bear repetition: "No native of British India nor any subject of His Majesty resident therein shall, by reason only of his religion, place of birth, descent, colour or any of

them, be disabled from holding any office under the Crown in India." Still the present distribution of offices between Europeans and Indians must be held to be an infraction of this right. It is, however, sanctified by other parts of our legal system, and one finds it hard to condemn it outright, in the hope that, as soon as we reach Dominion Home Rule, the anomaly of the infraction of this principle would cease to exist. Also one cannot forget that in many parts of the country now, not by action of the executive, but by action of the communal spirit in our legislative councils, a tendency has arisen to cut up services into divisions and proportions and to set up classes which may be called privileged. The principle that is enunciated, the equal eligibility of citizens to public offices, would mean that the equality is between one citizen and another, the question to what community he belongs not arising at all. I cannot say much more on this subject without causing unnecessary controversy; but I will, before leaving it, just mention that in the German Code, to which I have often invited your attention, one maxim is laid down in the chapter on Fundamental Rights which we had better remember. It is stated there all public servants are servants of the State and not at all those of a party or the party in power. Now the full implication of that is that no

public servant, no class of public servants, no individual members thereof should ever regard themselves as dependent for their appointment, fair treatment or promotion on the good grace of the leaders of any particular community. That feeling, once it is allowed to take possession of their minds, must convert them, rather, shall I say, must degrade them, even without their knowing it, into servants of that party. That such a result follows is the testimony of all observers in provinces of India where regulations, which have the effect of preferring class to class, have come into existence in our polity. For more on this subject I must refer you to standard treatises, but I think I shall not waste your time unduly, if I read a passage or two which will better illustrate my meaning than any words of mine which, in these days of very easy misunderstanding, may expose me to undeserved criticism. "Restrictions upon the very choice of careers involve a loss to the community as well as injury to the individual." Please mark the words "involve a loss to the community." "The State needs to-day more than ever to discover and utilise the best talents in every branch of life, if it is to hold its own in the conflict of nations." Before I complete this passage may I say that here the word 'community' means the whole of the body of citizens? It is a sign that we are not

keeping the normal level of citizenship, when the word 'community' amongst us, instead of meaning as it should the whole body of citizens, has come to mean that section of citizens that follows a particular religion or belongs to a class. In these passages which are from English authors, please understand the word 'community' in the other sense. Perhaps we shall do well to adopt another word "collectivity" which would mean everybody. "The interests of the community (in the sense of collectivity) demand a full and free development of each citizen, a constant regard for the material, intellectual and moral well-being of every child"—and these are the words I would like you to follow carefully—"and a persistent effort to discover talents and to secure to it the fullest and freest scope." This is a passage from Professor Henry Jones, from whom I read to you on the first occasion. "The worker must beware of confining his interest to his class." By worker he means the public servant amongst others. "He must beware of confining his interest to his class and to interpret those interests merely or even primarily in terms of the material conditions of well-being of that class, and secondly, when he stands to his duties as a citizen and utilises his talents for the service of the State, he must forget the very notion of a class and deal with the rights of man as man, aim always at a

good that is more universal than any class, the good of man as man. Then he can be trusted both with his own fate and with that of his country. He can be trusted while he is still on the way to this goal in so far as his ideal guides his footsteps."

Public Meeting.

Now under the head of "Public Meeting" there are only two items to which I propose to ask your attention. If one had sufficient time, one would deal with many other aspects as well. There are sections in the Criminal Procedure Code dealing with suppression of an unlawful assembly which seem to me to go beyond the standard set in advanced countries. I tried some time ago to bring the matter up before the Council of State, but failed. Some time after, Dewan Bahadur Rangachariar brought it up before the Assembly; he did not find it very difficult in that House to put it through, but the Council of State again proved a block, so that we are where we were. My complaint is threefold in reference to this branch of the subject. In the first place, there is no provision of a binding character which insists on the police or the magistrate giving warning. In England, the requirement is that, after the Riot Act is read, which means

after the warning is given, an hour should elapse before strong measures can be adopted. This raised a laugh in the Council of State when I mentioned it, but I laughed later. I took care to add that, in case within the hour the assembly threatened to get out of hand, this duty of waiting would no longer rest on the magistrate. Secondly, good faith is considered to be a sufficient justification for even excessive action on the part of the executive. This is not the law, as I understand, in England; excessive action would be punishable by courts of law, even if done in good faith, or if it be not criminally punishable, the aggrieved party would certainly have the right to go to a civil court for damages. Thirdly, there is a provision which exempts from all liability the soldier shooting under orders on such occasions or any other inferior officer doing something strong under orders. In England, even a soldier is not exempt from civil liability. I am inclined to think that the English Law, though consistent with itself and with its own spirit, is probably a little severe on the unhappy man who agrees to serve his country in the capacity of a soldier and therefore subjects himself to a particularly severe discipline. To require him to be liable to military duty and at the same time make him incur civil penalties, it seems to me, is to ask too much. I am

not therefore disposed to quarrel with that provision of the section. But there is another to which I strongly object. People aggrieved by the action of the executive in suppressing a riotous assembly should not be required to obtain the sanction of the Governor-General before prosecuting the officer concerned. The Governor-General, I understand, has never once given this previous sanction. It is only to be expected.

Then there is the Seditious Meetings Act X of 1911. According to this Act the Governor-General-in-Council first extends it to a province. Then the local government of that province notifies certain areas and proclaims them, and then within such areas, which can only be proclaimed for six months at a time, no meeting shall be held unless three days' notice is given to the District Magistrate or the District Magistrate chooses to dispense with the notice. Then the conductors of the meeting must admit police reporters, and the District Magistrate may, without assigning any reasons, prohibit the meeting, if in his opinion it is likely to disturb the peace, etc. You see therefore it is his opinion that is final. You cannot call his discretion in question before a court of law. And that is why the provision is from our point of view objectionable and the Seditious Meetings Act must be held to be a

restriction on the right of public meeting, which transgresses the standard of civilised communities.

Right of Association.

Lastly, I come to the right of association. Here too there is a provision which is contained in part II of the Criminal Law Amendment Act, 1908, which empowers the Governor-General-in-Council to declare an association unlawful if in his opinion—again not to be challenged in court—that association is engaged in the work of interfering with the administration of justice or otherwise disturbing the peace. His opinion that an association is unlawful cannot be called in question. If you are a worker in such an association, if you collect funds for it, if you distribute notices of its meeting, if you are a paid agent thereof, they will put you in jail for 6 months. If, however, you hold a more exalted position in the association and actually take a share in the management of it, you will get 3 years. But the objectionable thing is that the Governor-General-in-Council has used this power somewhat indiscriminately in Bengal. You know this was the section which was used under the designation of the Samiti Act to put down all volunteer associations. Not dozens and scores, but several hundreds of our young men and in a few cases young women, it seems, were

marched to the police station by exercise of this arbitrary power.

A Pampered Executive.

Owing to the compressed character of these lectures, it has not been possible to deal with each one of these liberties *seriatim*. Such full treatment would be of great interest as well as profit to the student of our public affairs. Nor have I been able to exhaust all that could be said on any of the selected liberties. My handling of each is only meant to be illustrative. In selecting the topics too I have been guided by the public attention, or,—shall I say?—notoriety that each has obtained. The freedom of marriage is practically non-existent among us, and you may remember the vehemence and heat that the Legislative Assembly witnesses whenever a Civil Marriage Bill appears on the horizon. But it has not assumed the character of a political dispute, *i.e.*, a dispute between the State and the citizen striving for emancipation. Only such rights or liberties as have arrayed the forces of the State against popular or political agitation have received notice at my hands. With this explanation I proceed to an important head of our discussion.

You will find on a survey of our legal system that the Indian executive is highly pampered. It

is given to-day powers denied to the executive in other countries. It uses these powers pretty freely and without much regard to the requirements of a high level of citizenship and the officials are in the constant habit of asking the legislative councils to give them more and more of such arbitrary power. Moreover, if you give them power for one purpose they use it for other purposes, provided you have not been sufficiently careful in framing your legislative provisions.

You all know how we raised a bitter cry over the absolute misuse of section 144 of the Cr. P. C. during the political troubles of a few years ago. But it is not only section 144 with which the executive has taken liberty to the detriment of our liberty. It has recently taken to the habit of using the passport regulations meant for our protection to our disadvantage. The passport regulation is made to protect an Indian citizen who travels out of India. But now the passport is denied for purely political causes. Several cases have come within my knowledge and doubtless within the knowledge of other people in which for no apparent reason a man who is out of India is not permitted to come in and a man who is inside India is not permitted to go out, so that we do not know which the authorities want. Do they dread us more in or out? Generally the

result seems to be out, out for ever; in, in for ever. It will be generally admitted that this is an illegitimate exercise of regulations passed for the purpose of protecting the emigrants. The only thing we can say in favour of our executive is that the executives of other countries seem to be using the Passport Act for exactly similar purposes. America too, I am afraid, must come under our general censure.

Now I want to gather together under different heads the extraordinary powers which our executive possesses. They are of various kinds. I take first the heading of legislation. Notwithstanding the erection of many legislative houses, which have behind them a fairly wide electorate, considering that the electoral system is new to India, notwithstanding, I say, the erection of these influential bodies of legislation, the executive still remains armed with the power of legislating, if one may say so, off its own bat. Section 71 of the Government of India Act enables the Governor-General on the motion of a local government to pass a regulation for any part of British India notified in that behalf by the Secretary of State in Council. Section 72 I have already mentioned which gives the power to make ordinances. Section 67 (b) has become famous in political controversy because under it the Governor-

General in his own personal capacity, after the refusal of the legislature to comply with his government's request or recommendation as it is called, may pass a law for the safety, tranquillity or the interests of British India or any part of it. This legislation includes and embraces taxation also, as you can recall with reference to the salt duty at Rs. 2-8.

Section 72 (e) of the same Act gives similar power, excluding of course taxation, to the Governor of a province. Now besides the power already mentioned under the head of taxation, our executive has certain other powers also. To this even stronger exception should be taken where representative institutions have been started, for you may well remember that in other countries, unlike India, even the first inauguration, however imperfect, of representative institutions, was marked by the conferment upon the legislature of the power of sanctioning or refusing taxation. According to section 106 (2) the High Court in its original jurisdiction is shut out in all matters of revenue or any acts done in the collection of it. You can at once imagine without any words of mine what enormous, all-pervasive power the executive has in this connection, when you remember that land revenue forms our chief item of taxation and that its administration inter-

feres with the daily lives of our people, considering that nearly 85 per cent. of our population depend on agricultural or allied industries. This is one power of taxation which does not come under the control of the courts at all, which clothes it with prestige, with ascendency, with control over the lives and destinies of citizens, of a vast and comprehensive nature. The Revenue Recovery Act of 1864 shuts out similarly civil courts. Then there is the Salt Act, section 7, by which the Governor-General-in-Council may impose a duty not exceeding Rs. 3 a maund and then either reduce, remit or re-impose it. That power, I must hasten to add, is now generally exercised under the control of the legislature. Then there is the 15th section of the Police Act 1861 which has come into recent prominence owing to the action of the executive in the Anantapur district of the Madras Presidency. Under it power is given to the executive to inflict a punitive police on a disturbed area and it is not liable to question in a court of law. Now you see thus between legislation and taxation the executive is clothed with unusual power. With reference to legislation it is possible to say that it is the result practically of the transitional nature of our constitution; but it is not possible to admit that excuse in the case of the further powers which

I am about to mention. For instance, there is the primary right of freedom of person which the executive can violate without being called in question in a court of law under section 111. I have already mentioned section 126, the Bengal Ordinance, the Criminal Law Amendment Act, then the whole network of political Prisoners' Regulations, Bombay, Madras and Bengal. And then freedom of movement is restricted, as I explained now, by passport regulations. Freedom of speech and meeting it can control by the Seditious Meetings Act and the sections of the Criminal Procedure Code (127 to 132) dealing with unlawful assemblies and section 144. These I have mentioned already. With reference to section 144 and certain other preventive sections of the Criminal Procedure Code our complaint that the executive brings them into operation rather too frequently and too lightly is borne out by several judgments of our High Courts. In Madras and in Calcutta and in other parts of India the High Courts have had frequent occasion to blame the executive for what they regard as an improper exercise of the preventive powers given to it. The scheme of rights is so framed that, as I told you before in my first lecture, every right is regarded as enforceable. There is no right which vests in us which the executive is

not under an obligation to protect. If then any persons prevent the exercise of a right by a citizen they behave unlawfully and must be restrained by the police; on the other hand, the police and the magistrate, who are always fond of taking short cuts to peace, use the preventive sections and produce this very remarkable effect that those who wish lawfully to exercise the rights vested in them are prevented, while those who threaten unlawfully to break the peace are encouraged to believe that, if they only make forcible enough threats they can prevail and get the police to curtail or suspend the citizen's lawful right. That is the sum and substance of the complaints that the High Courts have often found it necessary to make as to the use made by the executive in India of the extraordinary preventive action vested in it. Now you see how hard our lot is. We place the executive in this country in a very privileged and pampered position. We give them extraordinary powers, and still whenever they have got to protect us in the exercise of our lawful rights, they have recourse to preventive action and shut us up.

The following views of Judges would be of interest :—

Sec. 144. Cr. P. C.

Turner C. J. 6 Madras 203 :

"The Criminal Procedure Code declares the authority of the magistrate to suspend the exercise of rights recognised by law, when such exercise may conflict with other rights of the public or tend to endanger the public peace. By numerous decisions it has been ruled that this authority is limited by the special ends it was designed to secure and is not destructive of the suspended rights.

"I must nevertheless observe that this power is extraordinary and that the magistrate should resort to it only when he is satisfied that other powers with which he is entrusted are insufficient. Where rights are threatened, the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. It needs no argument to prove that the authority of the magistrate should be exercised in the defence of rights rather than in their suspension; in the repression of illegal rather than in interference with lawful acts. If the magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended and it is his duty to take from them security to keep the peace.

"Again, the prohibitory order was dictated by the magistrate's apprehension that disturbance would attend the exercise of the right, but from whom was

the disturbance to be apprehended except from the party that opposed the exercise of the right? Such an order issued under such circumstances involves an admission that lawlessness is anticipated and that at the time the executive is not in a position to afford protection. When such orders are repeated their justification, the preservation of the public peace, is not so obvious to those whose rights they interfere with as are their results. The impression is created that the authorities are powerless against the class from which violence is apprehended; and that a show of force similar to that which has rendered a judicial award practically inoperative will be more effectual to secure the recognition of civil rights than an appeal to constituted tribunals.

"When this impression takes hold of the minds of a large majority of the population grave dangers are to be apprehended from refusing than from conceding protection to the legitimate enjoyment of civil rights. Men to whom obedience to authority is distasteful are to be found in every party, but even those who are ordinarily anxious to uphold authority may be seduced by a sense of hardship and the example of successful tumult."

Sir Abdur Rahim, J. 22 Madras Law Journal, p. 232.

Speaking of the rights of Nadars to take a procession along a highway: "They would have every right to do so and if any persons wanted unlawfully to oppose them in the exercise of such right it is they that ought to be bound over and not the persons who were lawfully exercising or wanted to exercise their lawful rights. It is the duty of the sub-divisional officer who is responsible for the peace of his division to use his authority for the protection of persons who seek to exercise a right which the law allows them and to restrain persons who threaten to obstruct the exercise of such right."

Ainslie and Broughton, JJ. 5 Calcutta 132.

"The object of S. 518 (S. 144) is to enable a magistrate in case of emergency to make an immediate order for the purpose of preventing a breach of the peace. An order made under section 518 is not bad simply because it interferes with the legal rights of individuals. If it is found that a man is doing that which he is legally entitled to do and that his neighbours choose to take offence thereat and to create a disturbance in consequence it is clear that the duty of the magistrate is not to continue to deprive the first of the exercise of his legal right but to restrain the second from illegally interfering with the exercise of legal rights."

Departmental Aggression.

Then there are the great departments of the State which have grown into such tremendous importance, the Salt Department, the Forest Department, the Education Department and other Departments, each one of which has its own exceedingly elaborate code of regulations, which it takes an expert lawyer fully to understand. These rules and regulations have very often the effect of restricting the liberties of the citizen. You all know how we used to complain of the Forest Act, for instance. What is known as departmental aggression against the citizen's rights is now grown in India to an exceeding scale, and we have got to take account of it, when we estimate the extent to which our natural and legal rights are daily exercised. I need not say more on the subject, but shall give a rather long passage from an English judgment on departmental aggression in Britain, leaving you to realise how much greater must be our suffering here from this cause.

Farwell, L.J., I.K.B., 410. Dyson *vs.* Attorney-General.

"The next argument on the Attorney-General's behalf was *ab inconvenienti*—it was said that if an

action of this sort would lie there would be innumerable actions for declarations as to the meaning of numerous Acts, adding greatly to the labours of the Law Officers. * * * * There is no substance in the apprehension, but if inconvenience is a legitimate consideration at all, the convenience in the public interest is all in favour of providing a speedy and easy access to the courts for any of His Majesty's subjects who have any real cause of complaint against the exercise of statutory powers by Government departments and Government officials, having regard to their growing tendency to claim the right to act without regard to the legal principles and without appeal to any court. Within the present year in this court alone there have been no less than three such cases. In Rex *v.* Board of Education, the Board while abandoning by their Counsel all argument that the Education Act, 1902, gave them power to pursue the course adopted by them, insisted that this court could not interfere with them but that they could act as they pleased. *In re* Weir Hospital the Charity Commissioners were unable to find any excuse or justification for the misapplication of £5,000 of the trust funds committed to their care. *In re* Hardy's Crown Brewery, the Commissioners of Inland Revenue, who are entrusted by S. 2, Sub.-S. 1, of the Licensing

Act, 1904, with the judicial duty of fixing the amount of compensation under the Act, fixed the sum *mere motu* without any enquiry or evidence and without giving the parties any opportunity of meeting objections and claimed the right so to act without interference by any court. Bray J. and the Court of Appeal held that they had acted unreasonably and ordered them to pay costs. In all these cases the defendants were represented by the law officers of the Crown at the public expense, and in the present case we find the law officers taking a preliminary objection in order to prevent the trial of a case, which, treating the allegations as true, is of the greatest importance to hundreds and thousands of His Majesty's subjects. I will quote the Lord Chief Justice Baron in Deare *v.* Attorney-General. 'It has been the practice which I hope never will be discontinued for the officers of the Crown to throw no difficulty in the way of proceedings for the purpose of bringing matters before a Court of Justice when any real point that requires judicial decision has occurred.' I venture to hope that the former salutary practice may be resumed. If ministerial responsibility were more than the mere shadow of a name, the matter would be less important, but as it is, the courts are the only defence of the liberty of the subject against departmental aggression."

Combination of Judicial and Executive Functions.

Under this section of the executive attention has to be drawn to one other feature of our public polity, the combination of judicial and executive functions. This vicious system has been long complained of by popular leaders; the executive has, after ridiculing and resisting all reform for a generation, accorded it a platonic approval during the last ten years, as a legitimate piece of reform. Nevertheless, by one artifice or another, which the executive in all countries seems to be master of, this counsel of perfection still remains in the air. It is a remarkable instance of reform which has been accepted and admitted by all parties as necessary in the primary interests of the administration of justice, but still has been held back for reasons not quite satisfactory. The truth is that the executive finds the continuance of the arrangement of very great convenience, and here I may be pardoned if I say that it hurts my provincial pride to think that, whereas in other provinces the members of the popular legislative house have come forward to demand the early introduction of this reform, only in Madras it was left to the legislative council for some time to resist it. However, we shall not always

be behind other people, we shall catch them up and before long we shall see all over India this vicious system of the combination of judicial and executive functions which, as I told you, has both directly and indirectly the result of enlarging the arbitrary power of the executive, abolished.

Dicey against Executive Discretion.

Some of you possibly suspect that I am drawing on my imagination when I speak of executive officers as lying under a temptation always to use any powers that they have to the detriment of the individual citizen. I am not speaking without book. Some people would say that in France and other countries where jurisprudence runs on somewhat different lines to British jurisprudence the executive is armed with preventive power. It is only in England that the maxim is carried to the full logical length that the function of the law is to punish and not to prevent the commission of crime. On the continent the executive has power of a preventive nature to a far greater extent than British jurisprudence would tolerate. Also what we should regard as the pure system, the supremacy of law by which the

ordinary courts sitting in the ordinary manner try all actions, even those where the State and its officials acting in their official capacity are concerned, that too is pre-eminently British. On the continent there is a system of courts called the Administrative Courts. But I believe it is now allowed that at least in France the administrative courts have reached such a high level of efficiency and justice that they are hardly inferior to the ordinary courts, and therefore the aggrieved citizen, whether he pursues his wrong in the ordinary civil court or in the administrative court, does not feel prejudiced to the smallest extent. But this is admitted as a universal principle that where you arm the executive with arbitrary power, you must always be prepared for its abuse. This passage I take from Dicey, whose authority on all matters of the constitution has justly become an article of faith in the legal world. "In almost every continental community the executive exercise far wider discretionary authority in the matter of arrest, of temporary imprisonment, of expulsion from its territory and the like than is either legally claimed or in fact exercised by the Government in England"—and the passage which follows is important—"and a study of European politics now and again reminds English readers that wherever there is discretion

there is room for arbitrariness and that in a republic no less than under monarchy discretionary authority on the part of the Government must mean insecurity for legal freedom on the part of its subjects." Now the moral of it all is this : that whatever may have been the course of legislation and public administration in India so far, in future we must be on our guard against putting more power into the hands of the executive. We must not pass laws barring out courts from jurisdiction and saying no court shall take cognisance of action arising out of administrative acts. This sort of discretionary authority must not become a formula. There are too many provisions of this nature in our legislation to-day.

LECTURE IV.

DUTIES

On the first occasion I read to you the scheme of duties as found in the German constitution. Our scheme, so far as it may be discovered in our legislation and practice, is by no means so full, but that is only so far as actual law is concerned. Duties, however, rest also upon a moral basis, and on this head it would be more proper and helpful to our study, if we stress the moral even more than the legal side; but first a few brief words upon the legal side.

Legal Duties.

Our law of course lays on us the duty, as it must, of paying duties, cesses and taxes and bearing other public burdens according to our capacity. Then of the honorary duties, the law selects only the duty of being jurymen and assessors when called upon. Other honorary functions are left here to the option of each citizen to accept or not. But the

law has certain positive duties to lay upon us as citizens, and they are of a kind which you will recognise at once as necessary for the proper maintenance of the community. A section in the Criminal Procedure Code, No. 44, compels each citizen to give to the authorities any information which he may happen to possess regarding the commission of or attempt to commit certain grave offences against the community. Section 42 calls upon each citizen to help in arresting members of an unlawful assembly, and otherwise putting it down. Section 128 similarly requires each citizen to assist the authorities in dispersing an unlawful assembly. But in addition to all these duties there is one which, by abuse, the executive has made even more prominent than others, and that is under section 17 of the Police Act. That section says that in any disturbed area, if it appears to the magistrate that the regular police is not sufficient for the maintenance of order, he might require some citizens to enrol themselves as Special Police Officers and then they come under the discipline of the regular police force. This section, which might be often rightfully used, has, however, in recent times been used somewhat arbitrarily. The district magistrate has now and then thought that it would be wise in time of trouble, whether the police force be sufficient or not,

to get the people from whom he apprehends trouble out of the way by enrolling them as Special Police Officers, and summoning them to the parade just when they might otherwise be mischievously employed. Quite recently in the United Provinces a magistrate came into notoriety by enrolling certain members of the local bar, who were probably a little more irrepressible than others, to come and assist him as Special Police constables; of course they complained bitterly, but for some reason that I cannot understand, they did not bring the magistrate before the High Court, as, in this case, I am advised, they might have done.

THE DUTY OF VOTE.

These, however, you will recognise are duties which every right-minded citizen must agree to discharge. The franchise hitherto is only a right with us, the law does not make it a duty as well. Still the ideal of citizenship requires that it be regarded as a duty. It is a simple matter after all and not frequent. Why should any one feel it burdensome or tiresome? The duty can only be neglected to the disadvantage of the individual, and to the evident detriment of the State. How else can that public opinion be known or even formed upon which alone

the democratic character of our institutions can rest? Public opinion has many things to do, but its chief duty is occasionally to make a Government whether it is in Municipality, in a District Board or at the centre of administration. You cannot make a Government till you have gone and recorded your vote. He who refuses or neglects to use his vote, it seems to me, thereby proclaims to the world that he is not yet fit to become a member of a democratic polity. He may have many virtues, but he has not got this fundamental consciousness in him—that he cannot in reason criticise a Government which he has not helped either by voting for it or by voting against it. For you sustain a Government not merely by blind support but by intelligent criticism as well and that is why in the Canadian constitution they give a salary to the leader of the Opposition. Now it may seem to you that I am stretching a point in order to carry a little controversial triumph, but believe me I have always felt that the person, man or woman, who refuses to vote when he or she can do so deals a blow at the establishment on a firm basis of a democratic constitution. For if it is easy to persuade large numbers in a community that they ought not to go to the poll on a given occasion, I will say this, that in that community the value of the vote is still to be appreciated, and when, as in India,

the parliamentary vote is bestowed on millions of people for the first time in their history, if they refuse to vote and give political excuses which sound plausible, it takes a very credulous man to believe them. He will only conclude and conclude justly that they stayed away from the poll for a very slight cause because they do not understand the full value of the vote. This is the opinion of Mr. Elihu Root, a senator in America, a man of great fame in the world of diplomacy who has held high office :—

"Of course voting is a fundamental and essential part of the qualified citizen's duty to the Government of his country. A man who does not think it worth while to exercise his right to vote for public offices and on such public questions as are submitted to the voters is strangely ignorant of the real basis of all the prosperity that he has or hopes for and the real duty which rests upon him as a man of elementary morals; a man who will not take the trouble to vote is a poor-spirited fellow, willing to live on the labours of others and to shirk an honourable obligation, to do his share in return."

The author might have added that when a man, not having exercised his vote and helped the establishment of a Government on a proper basis, goes further and complains that that Government

does wrong, he certainly lets himself down still further, and has forfeited his right to criticise others, not having done his duty himself.

Then it is not merely the duty to vote but there are other such duties which too many persons shirk. A man declines for instance to serve on an important committee, to have his share in the drudgery of an association or political body. We are already familiar with that type here, are not we? You call a meeting which does not take place for want of a quorum. The men who do their duty are thereby punished for attendance. Therefore, the secretary of a body of which the management consists of several members of this sort, is in a most unenviable predicament. He has to do things in the name of other people. They will tell him neither aye nor nay, and if after waiting for a long time, he does a thing or two, he may be sure that the very man who has done nothing to help him will develop the longest tongue in criticising him. It is sad and disheartening, as everyone knows. Something takes place in the legislative council or in the Senate or any other place where there is a committee that sits for several hours and has to go through heavy items, not certainly all of them interesting, or likely to bring them fame in the newspaper press. The chances are that your indifferent man will not attend

but will leave the thing to be done by others, reserving to himself the right finally to come down on them should anything go wrong. Such people are a burden on public life. They levy a severe tax certainly on the public spirit of others. For you have to labour and do their share as well and get no thanks in the end, but some little drubbing. This is what the same author has to say of this sort of citizen. "The experiment of popular government cannot be successful unless citizens of a country generally take part in the government. There is no man free from the responsibility. That responsibility is exactly proportional to each man's capacity, to his education, to his experience in life, to his disinterestedness, to his capacity for leadership,—in brief to his equipment for effective action in the great struggle that is continually going on to determine the preponderance of good and bad forces in government, and upon the issue of which depend results so momentous to himself and his family, his children, his country and mankind. The selfish men who have special interests to subserve are going to take part; the bitter and malevolent and prejudiced men whose hearts are filled with hatred are going to take part; the corrupt men who want to take something out of government are going to take part; the demagogues who wish to attain places of

power through passion and prejudice of their fellows are going to take part. The forces of unselfishness, of self-control, of justice, of love of country, of honesty, are set off against them and these forces should have every possible attraction and personality and power among men, or they will go down in the irrepressible conflict. The scheme of popular government upon which so much depends cannot be worked successfully unless a great body of such men as are now in this room do their share and no one of us can fail to do his share without forfeiting something of his title to self-respect."

The Duty of Resistance.

There is one item with reference to which our dictum that certain things from one point of view are rights and from another point of view are duties applies to the full, *viz.*, resistance to the State. I shall be failing in my duty if I grudge any part of the time necessary to the full elucidation of this topic. For whatever I am, I am never willing to keep back from the public that which they should know, no matter whether they care to hear it or not. Now resistance to the State may sometimes become a right and at that very moment it becomes a duty as well. No one who cares for citizenship and for the public

welfare can question the right of each citizen to judge for himself in the last extremity. When he has fought his fight and failed to undo a public wrong and he feels in his conscience that he cannot acquiesce in it, nothing ought to keep him from resistance if he thinks he should resist. But then before he comes to that conclusion he ought to look round the question from every point of view, for the duty of resistance is to be exercised only with the utmost circumspection. In order that this discussion may appeal to you best, I have decided to rely mainly on certain authorities first as to the necessity of resisting when called upon, secondly as to the need of extreme caution in taking upon oneself this duty. Only one word before I read the extracts. Sometimes it is said that, when a man believes that something is wrong, he is bound at once, without thinking of anything else, to set up the standard of rebellion. Now it may be a necessary regard for the interests of society or merely timidity and cold feet which prevails upon a man, however dissatisfied, to submit to the wrong; for, believe me, there are many things in public life, many things indeed of which the indirect consequences are far more important and serious than the direct consequences. To say "Here is my duty, I see it in front of me, I care not whether the deluge

follows,'' is entirely to misjudge one's duty. For when you do something serious, somewhat out of the way, you are bound to consider what reaction it will necessarily have on society, and whether the result, taking the bad with the good, will still be on the credit side of the account or leave the community worse than when you meddled. That consideration, believe me, is not timidity, it is necessary regard for public welfare.

This is from Professor Laski, who is in the London School of Economics and teaches constitutional subjects with special reference to India. He is not a timid politician by any means. ''Every government in its working must seek to translate the rights of its citizens into the daily substance of men's lives. That emphasises the great importance resting upon our rights and the duty of the State to maintain us in our exercise of them. Every government is thus built upon a contingent moral obligation. Its actions are right to the degree that they maintain rights. When it is either indifferent about them, or wedded to their limitation, it forfeits its claim to the allegiance of its members.''

Now some people ask, ''Are we not bound to follow the majority, and when a legislature has made a law, is it open to us to resist although we might have been in the minority?'' Now no one will

question the right of a majority to rule the minority even against their wish; otherwise everything will come to a dead stop. The minority have only the right to fight as long as they can and then to attempt to convert themselves into a majority. More than that they cannot claim, but when we press this logic too far, a man is driven to examine the moral basis upon which the right of a majority in the last resort stands. After all the decision of a majority must be intelligent, must be public-spirited, must be conformable to equity and to the best interests of the community. Where these qualities are not present, a man is bound to examine the process by which the majority have arrived at their decision; and if, as may occasionally happen, as we know also from our recent experience in this country, the majority is made up of people who have not used their judgment but have merely voted or taken sides under the domination of a personality or under terrorism, as may happen in a militarist regime, or blinded by communal passion, then the question arises and must arise whether such a majority is entitled to the heart's allegiance to which ordinarily we think a majority is entitled. And here is the judgment of an author who is a politician and a philosopher as well —Professor MacCunn.

"Reasonable trust in the majority there can never be where there is not a readiness, if need be, to withstand that majority to the face, for it is only out of men prepared so to face the majority that a reasonable majority can be made." "If this spirit triumphs," that is the spirit of fatalistic submission or that slave mentality which often comes upon people, when any large masses have voted to order without thinking, "if this spirit triumphs, then the case for the majority is lost. Who would hold a brief," he asks, "for a majority whose every member, paralysed by his slavish spirit of blind acquiescence, was ready to shuffle off his individual responsibility and fasten it on neighbours as servile as himself," or on some very important man? Thus it may happen that even when the majority has decided against you, you may feel compelled from a moral point of view to resist the State, but when you do so you have got to take account of certain things. This is the portion that Professor Laski adds, after laying down his first proposition: "I ought not to resist"—that is his way of putting things, he considers himself to be the man in question—"I ought not to resist if I am convinced that the State is seeking, as best it may, to play its part, and for most that perception will result from what enquiry they undertake. I ought not further to resist unless

I have reasonable grounds for the belief that the changes I advocate are likely to result in the end I have in view. I must moreover be certain that the method I propose in order to realise my end will not in their realisation change its essential character. Men have often enough sought power for good and ended by exercising it for its own sake."

"The right to disobedience is of course to be exercised at the margins of political conduct. No community could hope to fulfil its purpose if rebellion became a settled habit of the population." Then again Professor MacCunn says: "It has been nobly said that timidity with regard to the well-being of one's country is heroic virtue. However a man may plead that the duty is thrust upon him by dire necessity and may justify it as the extreme medicine of the State, he must reckon with the certain prospect that others, perhaps less law-abiding than himself, will use him as their precedent to make the extreme medicine of the constitution its daily bread."

Resistance, a Moral Right.

The right to resist the State, although so called, is not a legal right. It is only a moral right and for a reason which is obvious. A right is enforceable against the State. You cannot enforce your right

to resist the State against the State : for the State would then be bound to assist you in resisting itself. So that the proper way of looking on this right is to regard it as a moral right which a man may exercise when he feels called upon to do so, but which the State is bound to resist, in other words, which the State is justly entitled to punish him for exercising.

Communalism.

In our consideration of rights and duties you will remember that the State and the individual citizen have always stood in mutual juxtaposition in our thought. We have recognised the right of the citizen and we have thought of the State against which this right may be exercised, but we have not at any stage in our thought brought in any smaller entity. It is the State acting for the whole community or as I said the other day the whole collectivity, for the word community has been used for other purposes in our country. No citizen owes any one of these rights to a mere community. He owes it to the whole of the collectivity. The State does wrong to itself, disarms itself as it were in a serious conflict, when it by its judicial or administrative measures erects and interposes

between itself and the citizen any entity, any influence or authority smaller than itself. Supposing he says, "My loyalty is not to the collectivity but only to a fraction thereof," he is not a citizen of the type that will benefit the State. He is a force for disruption, for discord, for disharmony. Many evils come upon the State, when these smaller loyalties are encouraged, not merely encouraged but made part of a citizen's duties, where, as in India, the State by its law tells a citizen: "You better consider yourself for voting purposes as a member of such and such a community and not a member of the whole collectivity, vote for your interest, vote for your people, do not think of the rest." Where such a state of things is introduced, where that is the normal state of things which is produced by your arrangements, the State has inevitably and fatally injured itself, for the State has deprived itself in every such instance of a large class of citizens on whose loyal support it is bound to depend. That is the true meaning of democracy. The citizen stands related to the whole and not to any section thereof. I wish to draw out the full meaning of this, but I must resist the temptation and merely pass on to consider the extreme length to which any smaller loyalty, once it takes possession of the heart, can injure the State; for everything is then viewed

from a sectional standpoint, not from the largest and most comprehensive standpoint.

May I point the moral by referring to an incident that occurred only the other day in the Assembly? Perhaps all of you did not notice it, but I did to my misfortune. When the question of repealing Regulation III of 1818 and allied odious Regulations was before the Assembly, a member on the Government side made an apparently innocent remark. He said "Nearly all the men who have been arrested and detained under this Act and Regulations are Hindus. There is hardly a Mahomedan in the list." A few Mahomedans did not swallow the bait; but many members of that community seemed for the moment to be overcome by the idea that, since this evil pressed hard only on another section, it did not matter so very much. That was part of the reason, although not the whole reason, why this matter, so vital to citizenship, ended in a defeat for our popular side. It is a sad thing altogether. But that is the way we encourage people to look at things, once we start it in our fundamental legal arrangements. But how disastrous it is you see at once. For it is to the interest of every one of us, whatever our party may be, whatever our religion may be, that this personal right of freedom of every citizen should be maintained. If my mortal anta-

gonist is injured in that right, my duty as a citizen is to stand by him. For in so far as that matter is concerned, his injury is my injury and the injury of the body politic. But when the general habit of looking through communal spectacles is ingrained in us, when young and old, officials and non-officials, make it their business day after day, time after time, on every occasion to raise the communal question and to look at every question from the communal point of view, then there is an end of the State, you have killed the body politic. There is another bitter lesson I learnt the other day. There occurred this important announcement in the press that a great Mahomedan leader in Bengal actually proposed that Muslim education should be taken out of the control of the Calcutta University. Some of us have laboured long in the field of education, and know what it means. We know that there is no surer way of creating a brotherly bond between human beings than to bring them together in the class room or in the debating association or on the playing field, nothing to break our differences and to enable us to realise one's kinship to the other like the common pursuit of educational aims. Great God! When the great task before us is to put Hindus and Mussalmans together, shall we deprive ourselves of this one means of teaching them to love one

another? I do not know how you felt when you read the news. You all know the story of the two women who quarrelled over the possession of the same child. The wise Kazi offered to cut the child, if they would agree to cast lots as to which should take the upper and which the lower half. Well, I confess to you I felt like the true mother, when I read this proposal. Whatever you divide, do not divide education, education in citizenship, education for the largest ends of the collectivity. It is bad enough to put citizens in different electorates and deny them public education like that which general elections offer. It is bad enough, it is suicidal, I grant. But what is this? This is nothing less than the cutting up of a baby. So ruinous is the operation of this communal spirit, so fatal this failure to look at things from the only reasonable and only proper point of view. Let me hasten to add that, if there are any particular grievances resting on the administration of departments, look into them by all means. Apply remedies, even when they may seem to conflict with our principle; for instance, the communal G. O. as regards the recruitment to public service. Let us remember that in the affairs of a great country there are other things as well and that on all these other things we may learn to unite and to advance the common

welfare. Let not the spirit that is embodied in the particular G. O. flow over until it consumes the entire body of our rights and duties and converts us, as I was saying the other day, degrades us, unconsciously perhaps, into instruments for working out the destinies not of the whole but of that section of the whole of which we consider ourselves parts. That way lies inevitable ruin.

The Rule of Law and Personal Rule.

Now, some of you who have had the goodness to sit with me through these lectures would probably say that I have been indulging in what may be regarded as an apotheosis of law and legality, of courts and judges and lawyers. Yes. I have done that. But I do not blame myself at all. I do not think that I have run the risk of encouraging a litigious population to become more litigious thereby. Litigious we are without a doubt, but we have to be litigious in a discriminatory way. Lawyers know what sort of litigation they generally get. They will have noticed that they do not get in this country litigation of the kind which I really wish to foster. I should welcome litigation when the State presses

unduly on the individual citizens of a province, when their rights are invaded and placed in jeopardy by arbitrary action of the executive. Then by all means go to law. When you quarrel for vexatious purposes, when you pay pleaders, whom you need not, when you say to yourselves, "I shall see that fellow in the witness box and give him a bad hour, even if it costs me my fortune," you then are litigious in the bad sense of the word. If you put the police in court for invading your right, if you call upon the district magistrate to explain to the High Court in its original jurisdiction why he issued such and such an order, you are justly litigious, you are fighting in the public interest. Of course the courts are generally ruled out in these cases in India, but even when the courts are open to us, I do not think we are quite so ready to test the matter. We are content to complain in the newspapers, to get up public meetings, sometimes to send memorials, but we really do not try conclusions, for we know that the State has a very long arm, that it has a bottomless purse and that it will generally buy the best legal talents. Nevertheless, as I told you frequently before, the law is our shield; we must not only respect the law ourselves but teach our neighbours to respect the law and teach aggressive officials to do likewise.

Do you know why there is such difference generally between British India such as it is and India as observed in the Indian States with honourable exceptions? Not that our Princes are generally bad-hearted people : they are good and kind in their way, but there are few among them who know that they must submit, and get their officers to submit, to the same law as their subjects. They mostly think that, as they make the law, they are above it. They may be good, they may be charitable, they may be generous, they may be all these things, they may be small editions of Sri Rama, nevertheless they would prefer their personal will to prevail over the operation of the invisible law. Why do our District Magistrates, District Collectors and other civilians often complain of the passing away of the old time when the bureaucrat had all the power over the district in his own hands, when there was no forest department, no registration department, no separate education department, when he was everybody and the whole district looked up to him as Providence? He then loved everybody. He then had a wide heart, and room enough in it for all except the unfortunate lawyer. The lawyer he cannot endure. Why? Merely because the lawyer interferes with the operation of the will of the executive officer. He asks him also to respect the

law. A lawyer merely says: "I am not opposed to your doing this wrong, do it by all means, but do it legally." Certainly the lawyer has taught the Indian citizen the great political lesson that the reign of law is any day superior to the personal rule of the old type.

Stand up for Your Rights.

The subsidence of the personal will in the government of a country, the appearance in full growth of the operation of law in all its majesty—that is the triumph of the British system of jurisprudence. We have got that, rather we have got the beginning of that. Let us not lightly part with this great gift that modern polity gives to us, for it is then that the rights of the citizen have a chance, although we may have the best and the most humane of governments. As you know, democrats as you are, you will not be happy until you govern yourselves and you can never govern yourselves where the absolute and personal will of the sovereign, be he Asoka, be he Akbar, where the absolute will of the sovereign is the law. It has been said that in Great Britain and in America there is more freedom in the customs and manners of the people than in the laws, while in other countries

like Switzerland, for example, there is far more freedom in the laws than in the customs and manners. Read aright, the meaning of this seems to be that, although certain people may have a beautiful system of law, well considered and balanced, giving to judges their proper place, giving to citizens every opportunity for the free exercise of their right, still it has to be ascertained whether in actual fact they do exercise this right and enjoy that measure of freedom, which you may infer from the study of the laws. That is a matter of constant observation. You cannot say that merely from a study of the paper system. The question papers in a University may indicate that the students are worked up to a very high standard. The actual education that the scholar receives may, however, be of poor quality, the question papers being meant only for the admiration of the outside world. Surely such paper constitutions are no good. We must learn to use these rights. We must stand up to the State, to the aggressor; we must stand up to him who questions our right and not merely when our individual right is invaded, but when our neighbours' rights are invaded, when the rights even of our enemies may be invaded in improper ways. That is the sum and substance of the whole teaching on citizenship. No use con-

ferring upon people the right to vote, honorary offices, avenues for public distinction, if they will prefer the sectional to the universal, if they will be loyal only to their religion, or to their community and not loyal to the State to which they owe everything. There is no use in conferring on a community an extensive system of fundamental rights and privileges, unless each citizen is so educated in the duties of citizenship that he will stand up like a man and fight, not for their possession on paper, but for their actual enjoyment, and will not only be allowed, but will be able and willing to proceed to the courts and establish his rights there.

A Question.

To apply a crucial test to the political ambition and capacity of our people, I have occasionally imagined that some catastrophe had overtaken our country and destroyed our political institutions. If we stand so stripped and are thrown on our own native capacities and political aptitudes, what sort of polity shall we evolve? When we want to test the real nature of our people, whether they are truly freedom-loving, whether they are brave and courageous citizens, whether they will say to the police constable, 'You go, I will not bribe you,' whether

they will say to the Magistrate, 'You put me in jail if you will, I will not surrender my right' and whether our people are capable of fighting for their rights—that is a question which may not be truly answered by a study of the surface facts of to-day. Let us therefore suppose that by some stroke of magic our public polity was destroyed and that there was no foreign invader, nobody to come and interfere with us. Shall we build up a polity which means the establishment of this sovereignty of law which I have just now tried to describe to you? Or shall we by a natural reaction fall back upon our Rulers, Maharajas, Rajas, Princes, Ruling Chiefs and be content to send up prayers that these may be made wise and merciful? Shall we build up our Courts with all their prestige and endow them with full jurisdiction over everybody, official and non-official, shall we ask for the power to make and unmake Government, shall we ask for the power to levy our own taxes and to watch over the way in which these taxes are subsequently spent, shall we ask for these powers and, having asked for them, shall we insist upon these being exercised?

And Answer.

I do not know, I am not so rash as to predict what we should do. Perhaps, my fellow-citizens,

brothers in a growing citizenship, perhaps we shall decline on the worse alternative, that way seems to lie our inherited tendency. Do you know sometimes I fear that our best men have failed in their duty in presence of the revolutionary and anarchical forces now afoot in our country? If we destroy the present fabric, which is by no means perfect, but which is capable of continual adaptation to better, finer issues, if once you destroy this jurisprudence for the understanding and practical elucidation of which our intellects seem to be so mightily fitted, —if once we destroy this fabric, shall we out of our own traditional aptitudes erect a similar fabric on the ruin? I dare not promise myself that, and that is why I hesitated and will hesitate again and again before I join any movement, which has the tendency to overthrow, the tendency to disestablish, the tendency to bring about a state of anarchy in the country, the tendency which destroys law, the tendency therefore which destroys order and ordered Government. It is a serious thought and, if, at the end of these talks, I leave the more serious-minded amongst you burdened with this thought, I think I shall only have done my duty. I hope I have not imparted any erroneous teaching nor any that may have a dangerous or upsetting tendency. I should then never forgive my-

self for having misused a great opportunity, which the trustful authorities placed in charge of the young allowed me to exercise. If I have put your thought on the road to the conquest of genuine Indian citizenship, then indeed I can flatter myself that I have spent my time to good purpose and by no means abused your kindness and hospitality.